

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY MORRIS,	§
	§ No. 96, 2012
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 9812010539
Plaintiff Below-	§
Appellee.	§

Submitted: March 22, 2012

Decided: April 11, 2012

Before **HOLLAND, BERGER, and JACOBS**, Justices

ORDER

This 11th day of April 2012, after careful consideration of the appellant’s opening brief, the State’s motion to affirm, and the record on appeal, it appears to the Court that:

(1) The appellant, Anthony Morris, filed this appeal from the Superior Court’s denial of his second motion for postconviction relief. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Morris’ opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Morris in July 1999 of delivery of cocaine and two related misdemeanor charges.¹ The Superior Court sentenced him to a total period of eight years and six months at Level V incarceration, to be suspended after serving one year and upon successful completion of Boot Camp for seven years of decreasing levels of supervision. Since that time, Morris has been found in violation of the terms of his probation on four separate occasions. In 2002, a Superior Court jury found him guilty of a separate drug offense for which he received a fifteen-year sentence.

(3) In December 2009, Morris filed a motion for postconviction relief, arguing that the Superior Court had no jurisdiction in his case because he had not been afforded an amenability hearing. The Superior Court denied that motion, and this Court affirmed on appeal.² In January 2012, Morris filed his second motion for postconviction relief. He again argued that the Superior Court had no jurisdiction over his juvenile drug offense because he had never had an amenability hearing in the Family Court. The Superior Court denied his motion. This appeal followed.

(4) Morris raises two issues in his opening brief on appeal. First, he contends that an amenability hearing cannot be waived. This claim, however, has been previously adjudicated against Morris and is procedurally barred by Superior

¹ The record reflects that Morris was 17 years old at the time of his arrest. The State requested an amenability hearing in the Family Court. Morris, however, who was represented by counsel, appeared in Family Court with his mother where they represented to the Family Court judge their desire to waive the amenability hearing and have the charges transferred to Superior Court.

² *Morris v. State*, 2010 WL 2183492 (Del. June 1, 2010).

Court Criminal Rule 61(i)(4). Morris also contends that his trial counsel was constitutionally ineffective for allowing Morris to waive his amenability hearing. Morris did not raise this claim in the motion for postconviction relief that he filed in the Superior Court. This Court will not consider claims for the first time on appeal.³ Even if we were to consider this newly-raised argument, it is clear that his ineffectiveness claim is simply a refinement of his first argument. As such, this claim also is barred as previously adjudicated.⁴

(5) After careful consideration, we find it manifest that the judgment below should be affirmed on the basis of the Superior Court's well-reasoned decision dated January 26, 2012. The Superior Court did not err in concluding that Morris' second motion for postconviction relief was untimely and previously adjudicated and that appellant had failed to overcome the procedural hurdles.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

³ Del. Supr. Ct. R. 8 (2012).

⁴ See *Skinner v. State*, 607 A.2d 1170, 1172 (Del. 1992) (holding that the Court is not required to consider a previously adjudicated claim simply because it has been refined or restated).