

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AMIR FATIR,	§	
	§	No. 680, 2006
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 75060892DI
Appellee.	§	

Submitted: May 25, 2007
Decided: September 5, 2007

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 5th day of September 2007, upon consideration of the briefs of the parties it appears to the Court that:

(1) Following a jury trial in 1976, the appellant, Amir Fatir,¹ was found guilty of first degree murder and other offenses.² Fatir was sentenced to death under title 11, section 4209(a) of the Delaware Code, which mandated a death sentence for those found guilty of first degree murder.³

Thereafter, as a result of this Court's decision in *State v. Spence*, the

¹ Fatir was then known as Sterling Hobbs.

² Fatir was also convicted of first degree robbery, second degree conspiracy and possession of a deadly weapon during the commission of a felony.

³ See Del. Code Ann. tit. 11, § 4209(a) (1974) (providing that the Court shall impose a sentence of death in any case in which a person is convicted of first degree murder) (current version at Del. Code Ann. tit. 11, § 4209(a) (2001)).

Superior Court vacated the death sentence and sentenced Fatir to life in prison without parole.⁴ Fatir's convictions and sentences were affirmed on direct appeal.⁵

(2) In 1983, Fatir filed a motion for postconviction relief under former Superior Court Criminal Rule 35(a). The Superior Court denied Fatir's motion.⁶ On appeal, this Court affirmed.⁷

(3) In 2006, Fatir filed a second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61(i)").⁸ By order dated December 12, 2006, the Superior Court denied the motion as procedurally barred.⁹ This appeal followed.

(4) On appeal, Fatir argues that the Superior Court's application of the Rule 61 procedural bars to his current postconviction motion was a

⁴ See *State v. Spence*, 367 A.2d 983, 988 (Del. 1976) (declaring invalid first sentence of section 4209(a) providing for mandatory death sentence); *State v. Hobbs*, Del. Super. Ct., Cr. ID No. 75060892DI, Balick, J. (Jan. 11, 1980) (order vacating death sentence and sentencing defendant to life in prison without parole).

⁵ *Hooks v. State*, 416 A.2d 189 (Del. 1980). See *Hooks v. State*, 429 A.2d 1312 (Del. 1981) (affirming imposition of life sentence after remand).

⁶ *State v. Hobbs*, 1987 WL 8269 (Del. Super. Ct.).

⁷ *Hobbs v. State*, 538 A.2d 723 (Del. 1988).

⁸ Former Rule 35 was replaced by Rule 35 in its current form and Superior Court Criminal Rule 61). See *State v. Lewis*, 797 A.2d 1198, 1200-01 (Del. 2002) (discussing the parameters of Rule 61 and current Rule 35).

⁹ See Del. Super. Ct. Crim. R. 61(i) (listing procedural bars to relief).

violation of the prohibition against ex post facto criminal laws. Fatir's ex post facto challenge to the application of Rule 61 is without merit.¹⁰

(5) Fatir contends that Peter J. Bosch, a deputy attorney general representing the State at his criminal trial, was not licensed to practice law in Delaware. As a result, Fatir contends that he was deprived of a fair trial.

(6) Fatir is mistaken in contending that Bosch was not admitted to practice law in Delaware. Bosch was admitted to practice before the Courts of this State pursuant to Supreme Court Rule 31, which granted limited permission to practice to Department of Justice attorneys who were admitted to practice in other jurisdictions.¹¹ Bosch properly served as a prosecutor in Fatir's criminal trial.¹²

(7) Fatir argues that the trial judge failed to instruct the jury on the offenses of second degree murder and manslaughter. Fatir raised this claim in his first motion for postconviction relief. The Court, however, did not address the issue when considering Fatir's appeal from the denial of

¹⁰ See *Bailey v. State*, 588 A.2d 1121, 1124-27 (Del. 1991) (holding that there is no constitutional impediment to the application of Rule 61 to a defendant whose convictions became final before the adoption of Rule 61 in 1987).

¹¹ Del. Supr. Ct. R. 31 (current version at Del. Supr. Ct. R. 55).

¹² The Court takes judicial notice of its order admitting Peter J. Bosch to limited practice. See *Order Admitting Peter J. Bosch to Practice Pursuant to Rule 31(7)*, Del. Supr., Duffy, J. (Bd. of Bar Exam'rs Oct. 23, 1973).

postconviction relief.¹³ Nonetheless, Fatir has not demonstrated that consideration of the claim at this juncture is warranted in the interest of justice.¹⁴

(8) Fatir attempts without success to revisit arguments challenging the constitutionality of the life sentence that was imposed after the death sentence was set aside. In *Spence*, this Court held that the second sentence of 4209(a), which provided for life imprisonment without benefit of parole, was “constitutionally valid.”¹⁵ Fatir offers no legitimate reason to depart from the Court’s decision in *Spence*.

(9) Fatir further contends, as he did on direct appeal, that the prosecutor improperly used peremptory challenges during jury selection.¹⁶ Fatir has not demonstrated that the issue should be reconsidered in the interest of justice.¹⁷

¹³ See *Hobbs v. State*, 538 A.2d 723, 724 (Del. 1988) (noting that *pro se* defendant secured representation by counsel who agreed to represent defendant solely on jury selection issue).

¹⁴ See Del. Super. Crim. R. 61(i)(2) (providing that “[a]ny ground for relief that was not asserted in a prior postconviction proceeding . . . is thereafter barred, unless consideration of the claim is warranted in the interest of justice”). See *Capano v. State*, 781 A.2d 556, 633-34 (Del. 2001) (explaining that right to have jury instructed on lesser included offense depends on existence of rational evidentiary basis for instruction).

¹⁵ *State v. Spence*, 367 A.2d 983, 988-89 (Del. 1976).

¹⁶ See *Hobbs v. State*, 416 A.2d 189, 196 (Del. 1980) (concluding that the State used its peremptory challenges properly within its power).

¹⁷ See Del. Super. Ct. Crim. R. 61(i)(4) (providing that “[a]ny ground for relief that was formerly adjudicated . . . is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice”).

(10) At the time of Fatir’s offenses, title 11, section 6531 of the Delaware Code reflected a Department of Correction policy that “[p]ersons committed to the institutional care of the Department shall be dealt with humanely, with effort directed to their rehabilitation, to effect their return to the community as safely and promptly as possible.”¹⁸ Fatir now contends that his life sentence without possibility of parole interfered with the Department of Correction’s mandate under section 6531 to “to effect [his] return to the community.” Fatir’s ex post facto challenge to his life sentence is without merit. The Department of Correction did not have a statutory duty to ensure his return to the community or to provide him with specific prison rehabilitation programs.¹⁹

(11) The Court concludes that the judgment below should be affirmed on the basis of the Superior Court’s well reasoned decision of December 12, 2006.²⁰ The Superior Court did not err in its determination that Fatir’s motion for postconviction relief was procedurally barred as

¹⁸ Del. Code Ann. tit. 11, § 6531(a) (Repl. 1979) (current version at Del. Code Ann. tit. 11, § 6531(a) (2001)).

¹⁹ See *DiStefano v. Watson*, 566 A.2d 1, 5-6 (Del 1989) (holding that prison rehabilitation programs do not implicate ex post facto clause); *Carr v. Redman*, 1988 WL 44803 (Del. Supr.) (holding that section 6531 creates no enforceable right to a specific rehabilitation program).

²⁰ *State v. Fatir*, 2006 WL 3873238 (Del. Super. Ct.).

untimely,²¹ repetitive,²² formerly adjudicated²³ and defaulted.²⁴

Reconsideration of Fatir's formerly adjudicated claim is not warranted in the interest of justice.²⁵ Moreover, consideration of Fatir's claims is not warranted on the basis of a constitutional violation or on the basis of a newly recognized retroactively applicable right.²⁶

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

²¹ See Del. Super. Ct. Crim. R. 61(i)(1) (barring claim filed more than three years after judgment is final or after newly recognized retroactively applicable right) (amended 2005 to reduce limitations period to one year for conviction final after July 1, 2005).

²² Del. Super. Ct. Crim. R. 61(i)(2).

²³ Del. Super. Ct. Crim. R. 61(i)(4).

²⁴ See Del. Super. Ct. Crim. R. 61(i)(3) (providing that any ground for relief that was not previously asserted is barred unless the movant demonstrates cause for relief from the procedural default and prejudice as a result of the violation of the movant's rights).

²⁵ Del. Super. Ct. Crim. R. 61(i)(4).

²⁶ See Del. Super. Ct. Crim. R. 61(i)(5) (providing that bars to relief are inapplicable to a colorable claim "of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction").