

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER DESMOND,	§	
	§	No. 429, 2006
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 91009844DI
Appellee.	§	

Submitted: July 2, 2007
Decided: October 11, 2007

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

ORDER

This 11th day of October 2007, upon consideration of the parties' briefs and the Superior Court record, it appears to the Court that:

(1) The appellant, Christopher Desmond, filed this appeal from the Superior Court's August 2, 2006 denial of his sixth motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61").¹ It is manifest that the Superior Court's denial of relief should be affirmed on the basis of, and for the reasons set forth in, the Court's well-reasoned decision.

(2) Desmond was convicted in 1992 of ten counts of first degree robbery plus related offenses, including Possession of a Deadly Weapon During the

¹ *State v. Desmond*, 2006 WL 2221005 (Del. Super.).

Commission of a Felony, and was sentenced to seventy years incarceration at Level V. On direct appeal, Desmond argued in part, and without success, that there was insufficient evidence to establish that he had possessed a deadly weapon. When affirming Desmond's convictions and sentence, the Court concluded that there was sufficient evidence for a rational jury to find beyond a reasonable doubt that Desmond had possessed a deadly weapon.²

(3) In 1995, Desmond filed the first of six motions for postconviction relief. Desmond's first postconviction motion argued in relevant part that he was convicted on the basis of insufficient evidence, without the benefit of exculpatory evidence, and in violation of his right to represent himself at trial.

(4) The Superior Court denied Desmond's first postconviction motion, determining that each of Desmond's claims was conclusory and/or could have been raised on direct appeal but was not.³ On appeal from the denial of postconviction relief, this Court affirmed.⁴

(5) In the five postconviction motions that followed, Desmond continued to argue in whole or in part that he was convicted on the basis of insufficient evidence, without the benefit of exculpatory evidence, and in violation of his right

² *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

³ *State v. Desmond*, 1995 WL 717628 (Del. Super.).

⁴ *Desmond v. State*, 1996 WL 145818 (Del. Supr.).

to represent himself. Desmond also raised the claims in a federal habeas corpus petition.

(6) The Superior Court denied each of Desmond's five postconviction motions as procedurally barred. On appeal, this Court affirmed.⁵

(7) The United States District Court denied Desmond's habeas corpus petition after concluding that each of Desmond's claims was without merit.⁶ The District Court then issued a decision denying Desmond's request to appeal the claim that he was denied the right to represent himself at trial.⁷

(8) In this appeal from the denial of his sixth motion for postconviction relief, Desmond argues that the Superior Court misapplied the procedural bars of Rule 61. Desmond's argument is without merit. The Superior cases to which Desmond refers do not illustrate the Superior Court's inconsistent application of the Rule 61 procedural bars as Desmond would have this Court conclude.

(9) The Court instead concludes that the Superior Court appropriately barred Desmond's sixth motion for postconviction relief as untimely,⁸ defaulted⁹

⁵ *Desmond v. State*, 2001 WL 257803 (Del. Supr.); *Desmond v. State*, 2003 WL 1524128 (Del. Supr.); *Desmond v. State*, 2004 WL 1587038 (Del. Supr.); *Desmond v. State*, 2005 WL 1123390 (Del. Supr.).

⁶ *Desmond v. Snyder*, 1999 WL 33220036 (D. Del.)

⁷ *Desmond v. Snyder*, 2000 WL 1726531 (D. Del.).

⁸ 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).

and/or formerly adjudicated.¹⁰ The Court agrees with the Superior Court that reconsideration of Desmond’s claims is not warranted in the interest of justice,¹¹ on the basis of a constitutional violation,¹² or on the basis of a newly recognized retroactively applicable right.¹³

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁹ 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).

¹⁰ See Del. Super. Ct. Crim. R. 61(i)(4) (providing that “[a]ny ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice”).

¹¹ *Id.*

¹² 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”).

¹³ *Id.* Del. Super. Ct. Crim. R. 61(i)(1).