

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARTHUR GOVAN,	§
	§ No. 146, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 92010166DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 14, 2007
Decided: November 6, 2007

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 6th day of November 2007, upon consideration of the parties' briefs, the parties' supplemental memoranda, and the record below, it appears to the Court that:

(1) The defendant-appellant, Arthur Govan, filed an appeal from the Superior Court's March 14, 2006 order summarily denying his fourth motion for postconviction relief pursuant to Superior Court Criminal Rule 61. So that the Superior Court may reconsider Govan's motion in light of this Court's recent decision in *Chao v. State*, Del. Supr., No. 475, 2004, Berger, J. (June 20, 2007), this matter will be remanded to the Superior Court for further proceedings in accordance with this Order.

(2) In June 1993, Govan was found guilty by a Superior Court jury of two counts of Intentional Murder in the First Degree, two counts of Criminally Negligent Felony Murder, Burglary in the First Degree, Conspiracy in the First Degree, five counts of Possession of a Deadly Weapon During the Commission of a Felony and Possession of a Deadly Weapon By a Person Prohibited. He was sentenced to four consecutive life terms without parole plus an additional 115 years. This Court affirmed Govan’s convictions and sentences on direct appeal.¹

(3) At the time Govan committed his crimes, the felony murder statute provided that a person commits felony murder when “[i]n the course of and in furtherance of the commission or attempted commission of a felony . . . , the person recklessly causes the death of another person”² In *Chao v. State*, 780 A.2d 1060 (Del. 2001), this Court held that the “in furtherance of” language of the statute addressed solely the identity of the person committing the murder. Subsequently, in *Williams v. State*, 818 A.2d 906 (Del. 2002), this Court, overruling *Chao*, interpreted the felony murder statute to require not only “that the murder occur during the course of the

¹ *Govan v. State*, Del. Supr., No. 363, 1993, Walsh, J. (Jan. 30, 1995).

² Del. Code Ann. tit. 11, § 636(a) (2).

felony but also that the murder **occur to facilitate commission of the felony.**” (Emphasis supplied.)³

(4) Relying on *Williams*, Govan moved for postconviction relief in the Superior Court. Govan argued that his felony murder convictions required reversal because *Williams* had overruled the holding in *Chao* upon which his felony murder conviction was grounded. On August 2, 2006, following the completion of briefing in this appeal from the Superior Court’s denial of Govan’s postconviction motion, the Court ordered the matter stayed pending its decision in *Chao v. State*, Del. Supr., No. 475, 2004, which would address the retroactivity issue.

(5) Following the issuance of the Court’s decision, which held the ruling in *Williams* to be retroactive, supplemental memoranda were submitted by the parties at the Court’s request. The State conceded that the ruling enunciated in *Williams* applies retroactively to Govan’s case. However, the State argued that, under the concurrent sentence doctrine, this Court need not expend judicial resources to answer the substantive questions raised in Govan’s appeal, since he will spend the rest of his life in prison in any case.⁴ The State also reserved the right, should this Court decline to

³ *Williams v. State*, 818 A.2d at 913.

⁴ *Stroud v. Milliken Enterprises, Inc.*, 552 A.2d 476, 480 (Del. 1989).

apply the concurrent sentence doctrine, to request the Superior Court to enter convictions on the lesser-included offense of manslaughter as to each victim and to sentence Govan accordingly.

(6) We have determined that, under these circumstances, this matter must be remanded so that these issues may be addressed by the Superior Court in the first instance.

NOW, THEREFORE, IT IS ORDERED that this matter is hereby REMANDED to the Superior Court to reconsider Govan's fourth postconviction motion in light of this Court's recent ruling in *Chao* and to take whatever further action it deems necessary with respect to Govan's current sentences. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs
Justice