

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IRA D. BROWN,	§
	§
Defendant Below-	§ No. 227, 2008
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0704021625
Plaintiff Below-	§
Appellee.	§

Submitted: May 21, 2008
Decided: August 11, 2008

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

ORDER

This 11th day of August 2008, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Ira Brown, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Brown's opening brief that his appeal is without merit. We agree. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Brown was arrested on April 18, 2007 on multiple criminal charges, including first degree reckless endangering and maintaining a vehicle for keeping a controlled substance. At the time of

his arrest, Brown was on pretrial release after making bail following his January 21, 2007 arrest on unrelated criminal charges, including DUI.¹ On September 24, 2007, Brown pled guilty to first degree reckless endangering and maintaining a vehicle. The Superior Court sentenced him to a total period of six years at Level V incarceration, to be suspended after serving nine months for one year at Level III probation. In March 2008, Brown filed his first motion for postconviction relief, which the Superior Court denied. This appeal followed.

(3) The only issue raised by Brown in his postconviction petition and his opening brief on appeal challenge his sentence for violating the probation associated with his DUI charge, which is separate criminal case. Brown never filed an appeal from his VOP sentence. Moreover, the Superior Court docket in Brown's DUI case reflects that he filed unsuccessful petitions for correction of sentence, postconviction relief, and habeas corpus. Brown did not attempt to appeal any of those rulings.

(4) Because Brown's postconviction motion and his appeal from the denial therefrom do not challenge his convictions for reckless

¹ Brown ultimately pled guilty to DUI and other charges on May 21, 2007 under Criminal ID 0701016624. He was sentenced to one and a half years of incarceration suspended entirely for a year of probation. In July 2007, he was found in violation of the terms of his probation. The Superior Court imposed the same sentence. Brown again was charged with violating probation in November 2007. The Superior Court sentenced him to one year plus five months incarceration, to be suspended after serving five months for one year of probation. Brown did not appeal that sentence.

endangering and maintaining a vehicle, we find no error in the Superior Court's denial of his motion. Brown may not attempt to avoid the procedural bars of Rule 61 in his DUI case by filing a postconviction petition in this unrelated criminal case challenging the VOP conviction and sentence associated with his DUI conviction.²

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

BY THE COURT:

/s/ Randy J. Holland
Justice

² See Super. Ct. Crim. R. 61(a) (2008) (limiting the scope of the rule to applications seeking to set aside a judgment of conviction).