## IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALONZO MORRIS,	<b>§</b>	
	§	No. 502, 2012
Defendant Below,	<b>§</b>	
Appellant,	<b>§</b>	Court Below—Superior Court
	<b>§</b>	of the State of Delaware in and
v.	<b>§</b>	for Sussex County
	<b>§</b>	
STATE OF DELAWARE,	§	
	<b>§</b>	
Plaintiff Below,	§	Cr. ID No. 9911000751
Appellee.	§	

Submitted: November 19, 2012 Decided: February 12, 2013

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

## ORDER

This 12<sup>th</sup> day of February 2013, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Alonzo Morris, filed this appeal from the Superior Court's August 6, 2012 denial of his third motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (hereinafter "Rule 61"). The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Morris' opening brief that the appeal is without merit. We agree and affirm.

- (2) In November 2002, a Superior Court jury convicted Morris of Assault in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. Fairly summarized, the jury found that Morris caused serious physical injury when he hit the victim in the head with a piece of PVC pipe. On direct appeal, we affirmed Morris' convictions. We also affirmed the Superior Court's denial of Morris' first and second motions for postconviction relief. 2
- (3) In his third motion for postconviction relief, Morris alleged that the trial judge erred when instructing the jury on the elements of Assault in the First Degree. According to Morris, the instruction was an incorrect statement of law because the jury was not given the option of finding that Morris had wielded a "dangerous instrument" when he struck the victim in the head with the PVC pipe. According to Morris, had the jury determined that the PVC pipe was a "dangerous instrument," he would not have been convicted of Possession of a Deadly Weapon During the Commission of a Felony and would have avoided the twenty-year mandatory sentence imposed for that conviction.
- (4) In its August 6, 2012 order, the Superior Court reasoned that Morris' third postconviction motion was procedurally barred under various subsections of Rule 61(i) because the underlying jury instruction claim was without merit. On appeal, Morris claims that the denial of his motion was an abuse of discretion

<sup>&</sup>lt;sup>1</sup> *Morris v. State*, 2004 WL 439881 (Del. Supr.).

<sup>&</sup>lt;sup>2</sup> Morris v. State, 2006 WL 988041 (Del. Supr.); Morris v. State, 2011 WL 1413301 (Del. Supr.).

because the jury instruction claim presented a colorable claim of a miscarriage of

justice that warranted the application of an exception to the procedural bars.

(5) Having carefully reviewed the parties' positions on appeal and the

Superior Court record, the Court concludes that the Superior Court properly

determined that Morris' third postconviction motion was procedurally barred

without exception. As noted by the Superior Court, the jury was correctly

instructed that a deadly weapon is defined to include a dangerous instrument.<sup>3</sup>

Therefore, whether Morris committed the assault with a deadly weapon or a

dangerous instrument made no apparent difference with respect to his convictions

for Assault in the First Degree and Possession of a Deadly Weapon During the

Commission of a Felony.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is

GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele

Chief Justice

<sup>3</sup> See Del. Code Ann. tit. 11, § 222(4)-(5) (2007 & Supp. 2010) (defining "dangerous instrument" and "deadly weapon").

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