IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES G. BROWN,	§	
	§	No. 549, 2013
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. 9705011656
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: October 21, 2013
Decided: November 20, 2013

Before **HOLLAND, BERGER** and **JACOBS**, Justices

O R D E R

This 20th day of November 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 defendant-appellant, James G. Brown, filed an appeal from the Superior Court's September 13, 2013 order denying his eighth motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.[1] We agree and affirm.

(2) The record before us reflects that, in April 1988, Brown was convicted of Assault in the First Degree as a lesser-included offense of Attempted Murder in the First Degree, Assault in the Second Degree, Trafficking in Cocaine, Possession With Intent to Deliver Cocaine, Resisting Arrest and three related weapon offenses. He was sentenced to a total of nineteen and a half years of Level V incarceration. Brown's convictions were affirmed by this Court on direct appeal.[2] The record reflects that Brown unsuccessfully appealed three of the Superior Court's seven denials of his subsequent motions for postconviction relief.[3] This is Brown's appeal from the Superior Court's denial of his eighth postconviction motion.

(3) In his appeal, Brown claims that the Superior Court a) improperly denied his motion on time and procedural grounds without considering the merits of his claims; b) violated his due process rights by engaging in *ex parte* communication with the State; and c) improperly denied his request for the appointment of counsel.

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[1] Supr. Ct. R. 25(a).
[2] *Brown v. State*, 1999 WL 504315 (Del. Mar. 15, 1999).
[3] *Brown v. State*, Del. Supr., Nos. 31 and 57, 2003, Veasey, C.J. (June 24, 2003); *Brown v. State*, Del. Supr., No. 437, 2008, Jacobs, J. (Jan. 30, 2009); *Brown v. State*, Del. Supr., No. 400, 2012, Ridgely, J. (Oct. 15, 2012).

(4) Brown's first claim is that the Superior Court improperly denied his motion on time and procedural grounds without considering the merits of his claims. Delaware law requires the Superior Court to first determine whether the time and procedural bars of Rule 61 apply before considering the merits of a defendant's postconviction claims.[4] The record reflects that, in considering Brown's eighth postconviction motion, the Superior Court properly applied Rule 61's time and procedural bars before considering the merits of Brown's claims. In the absence of any error or abuse of discretion on the part of the Superior Court, we conclude that Brown's claims were properly barred in this proceeding.[5]

(5) Brown's second claim is that the Superior Court violated his due process rights by engaging in *ex parte* communication with the State. As was the case in the Superior Court, Brown provides no factual basis for his claim. In the absence of any discernible basis for Brown's second claim, we conclude that the Superior Court properly denied it.

(6) Brown's third, and final, claim is that the Superior Court improperly denied his motion for the appointment of counsel to represent him on his claims of ineffective assistance of trial counsel. The record before us reflects no discernible basis for the appointment of counsel in

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[4] *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996).
[5] Super. Ct. Crim. R. 61(i) (1), (2), (3), (4) and (5).

connection with Brown's eighth postconviction motion. There is no evidence in the record before us that his ineffectiveness claims have not been properly addressed by the Superior Court in his previous motions. As such, we conclude that this claim, too, was properly denied by the Superior Court.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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/ Randy J. Holland
Justice