

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD N. JOHNSON,	§	
	§	No. 52, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 9812007273A
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 27, 2013

Decided: March 10, 2014

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

ORDER

This 10th day of March 2014, upon consideration of the parties’ briefs and the Superior Court record, it appears to the Court that:

(1) In 1999, a Superior Court jury convicted the appellant, Ronald N. Johnson, of Menacing and Possession of a Deadly Weapon by a Person Prohibited (“PDWBPP”). On October 21, 1999, Johnson was sentenced, as an habitual offender, to eighteen years at Level V.

(2) In 2002, on direct appeal, we affirmed the judgment of the Superior Court.¹ In 2009, we affirmed the dismissal of Johnson’s first

¹ *Johnson v. State*, 2002 WL 714520 (Del. Apr. 22, 2002).

motion for postconviction relief under Superior Court Criminal Rule 61 (“Rule 61”).² This appeal is from the Superior Court order dated January 9, 2013, which denied Johnson’s second motion for postconviction relief.

(3) Johnson filed his second postconviction motion on June 7, 2010 and two supplements to that motion on June 18, and July 2, 2010. In his postconviction motion as supplemented (hereinafter “motion”), Johnson raised overlapping claims of judicial bias, ineffective assistance of counsel, improper amendment to indictment, and illegal conviction of PDWBPP. Johnson also alleged that he was ineligible for sentencing as an habitual offender, that a Superior Court colloquy on self-representation was inadequate, and that there were errors in the jury instructions.

(4) Johnson’s motion was referred to a Superior Court Commissioner who directed that Johnson’s former counsel file an affidavit in response to the allegations of ineffective assistance of counsel, and that the State file a response to the motion. After counsel filed the affidavit, Johnson again filed a supplement to the motion. Johnson also filed a reply to the State’s response.

(5) Johnson next filed a “motion for recusal” and a “motion for expansion of the record.” By order dated June 29, 2011, the Commissioner

² *Johnson v. State*, 2009 WL 3286107 (Del. Oct. 13, 2009).

denied both motions. On appeal, the Superior Court affirmed the denial of the “motion for expansion of the record” but remanded the “motion for recusal” for a more thorough analysis. On remand, the Commissioner again denied the “motion for recusal” by order dated September 9, 2011. Also, by order dated August 5, 2011, the Superior Court denied a second “motion for recusal” that Johnson had filed seeking recusal of the Superior Court trial judge.

(6) Next, on January 27, 2012, Johnson unsuccessfully attempted to supplement the motion for the fourth time. After determining that Johnson had neither sought permission to file the supplement nor demonstrated good cause to further amend the motion, the Commissioner issued an order on February 6, 2012 that refused Johnson’s January 27, 2012 filing.

(7) By report and recommendation dated June 12, 2012, the Commissioner issued a seventeen-page report recommending that Johnson’s motion be summarily denied as procedurally barred under several subsections of Rule 61(i). The Commissioner also recommended that Johnson’s ineffective assistance of counsel claims should be denied as without merit.

(8) Following the Commissioner’s report, and at Johnson’s request, the Superior Court twice extended Johnson’s deadline for filing objections to

the Commissioner's report. When Johnson did not file the objections by the August 13, 2012 deadline, but instead filed the objections on September 6, 2012, the Superior Court rejected the objections as untimely filed.

(9) By order dated January 9, 2013, the Superior Court, after reviewing the record *de novo*, adopted the Commissioner's report and recommendations and denied Johnson's motion. This appeal followed.

(10) On appeal, Johnson continues to raise the claims he raised in his motion, namely those of judicial bias, ineffective assistance of counsel, improper amendment to indictment, illegal conviction of PDWBPP, ineligibility for habitual offender sentencing, inadequate colloquy on self-representation, and erroneous jury instructions. Also, Johnson claims that the Commissioner erred when denying the "motion for expansion of the record" and "motion for recusal," and when refusing Johnson's fourth attempt to supplement the motion. Finally, Johnson claims that the Superior Court judge erred when denying the "motion for recusal" and when rejecting Johnson's untimely objections to the Commissioner's report and recommendations.

(11) When considering a motion for postconviction relief, the Superior Court must first determine whether the movant has met the procedural requirements of Rule 61 before considering the merits of the

movant's claims.³ We review the Superior Court's denial of a postconviction motion for abuse of discretion, and we review questions of law *de novo*.⁴

(12) In this case, the Court can discern no error of law or abuse of discretion either in the Commissioner's denial of Johnson's "motion for recusal" and "motion for expansion of the record" or in the Commissioner's order refusing Johnson's fourth attempt to supplement the motion. The Court can also discern no error or abuse of discretion in the Superior Court's rejection of Johnson's objections to the Commissioner's report as untimely filed.

(13) In this case, having carefully considered the parties' briefs, the Court concludes that the judgment of the Superior Court should be affirmed on the basis of, and for the reasons provided in, the Commissioner's report and recommendations dated June 12, 2012 as adopted by the Superior Court in its order dated January 9, 2013. First, as determined by the Superior Court, Johnson has not and cannot demonstrate that his counsel's representation fell below an objective standard of reasonableness and was

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁴ *Guy v. State*, 82 A.3d 710, 713 (Del. 2013).

prejudicial.⁵ Second, we agree with the Superior Court that Johnson’s motion is procedurally barred as untimely under Rule 61(i)(1)⁶ and as repetitive under Rule 61(i)(2).⁷ Third, we agree that the motion raised several claims that were formerly adjudicated on direct appeal and thus were barred by Rule 61(i)(4),⁸ and that the motion otherwise raised claims that were barred under Rule 61(i)(3) because Johnson could have previously raised them and did not and could demonstrate neither cause nor prejudice for the default.⁹ Finally, on appeal, as in the Superior Court, Johnson has not demonstrated that consideration of his barred claims is warranted “in the interest of justice,”¹⁰ because of “a miscarriage of justice,”¹¹ and/or based on a newly recognized “retroactively applicable right.”¹²

⁵ *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984).

⁶ See DEL. SUPER. CT. CRIM. R. 61(i)(1) (barring motion filed more than three years after judgment is final) (amended 2005 to reduce filing period to one year).

⁷ See DEL. SUPER. CT. CRIM. R. 61(i)(2) (barring “[a]ny ground for relief that was not asserted in a prior postconviction proceeding” unless consideration is warranted in the interest of justice).

⁸ See DEL. SUPER. CT. CRIM. R. 61(i)(4) (barring formerly adjudicated claim).

⁹ See DEL. SUPER. CT. CRIM. R. 61(i)(3) (barring a claim not previously raised absent cause for relief from the procedural default and prejudice).

¹⁰ See DEL. SUPER. CT. CRIM. R. 61(i)(4) (allowing reconsideration of formerly adjudicated claim “in the interest of justice”).

¹¹ See DEL. SUPER. CT. CRIM. R. 61(i)(5) (providing that the procedural bar of R. 61(i)(1), (2), and (3) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

¹² See DEL. SUPER. CT. CRIM. R. 61(i)(1) (providing that a postconviction motion asserting a retroactively applicable right is not time-barred if it is filed within three years

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

after such right is “newly recognized” by the Delaware Supreme Court or the United States Supreme Court) (amended 2005 to reduce filing period to one year).