IN THE SUPREME COURT OF THE STATE OF DELAWARE

MONIR A. GEORGE,	§	
	§	
Defendant Below-Appellant,	§	No. 403, 2012
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr. ID 0805035299
Plaintiff Below-Appellee.	§	
	§	

Submitted: January 4, 2013
Decided: February 12, 2013

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

O R D E R

This 12th day of February 2013, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The defendant-appellant, Monir George, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. In its answering brief, the State concedes that this matter must be remanded to the Superior Court for further consideration. We agree. Moreover, in the interest of justice, we conclude that the Superior Court's decision should be vacated and that counsel should be appointed to represent George in pursuing his claims for postconviction relief.

(2) In October 2009, George was found guilty but mentally ill, following a bench trial, of Murder in the First Degree, Attempted Murder in the First Degree, Reckless Endangering in the First Degree, and three counts of Possession of a Firearm During the Commission of a Felony.[1] The Superior Court sentenced George to life imprisonment plus a term of years. This Court affirmed his convictions and sentence on direct appeal.[2] On October 7, 2011, George filed his first motion for postconviction relief, which raised numerous issues including ineffective assistance of counsel. The Superior Court directed George's trial counsel to respond to his allegations but informed the State that it was not required to respond. On November 29, 2011, a Superior Court Commissioner issued a report recommending that George's motion be denied. The Superior Court denied George's motion on June 29, 2012. This appeal followed.

(3) In its answering brief, the State recommends that this matter be remanded to the Superior Court for further consideration. According to the State, the Superior Court's June 29, 2012 order does not reflect that the trial court conducted a de novo review of the Commissioner's report and recommendation as required by Superior Court Criminal Rule 62(a)(5)(iv). The State concedes that the procedural bars cited in the Superior Court's order—Rule 61(i)(2) and (3)—do not

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[1] *See* DEL. CODE ANN. §§ 531, 604, 636, 1447A (2007).

[2] *George v. State*, 2010 WL 4009202 (Del. Oct. 13, 2010).

apply because this is George's first postconviction motion and because he raises claims of ineffective assistance of counsel (which could not have been raised at trial or on direct appeal). The State recommends that the matter be remanded to the Superior Court for the appointment of counsel and to allow George, with counsel's assistance, to refile his objections to the Commissioner's report and recommendation.

(4) After careful consideration, we find that the Superior Court's June 29, 2012 order must be vacated. We agree that counsel must be appointed to assist George on remand. In addition to allowing George to refile his objections to the Commissioner's report, with the assistance of counsel, we also conclude that counsel should be permitted to raise any additional, arguable issue that George did not raise in the motion (and amendments) that were considered by the Commissioner in the first instance.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's order dated June 29, 2012 is hereby VACATED. This matter is REMANDED to the Superior Court for further proceedings consistent with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice