

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN C. JOHNSON,	§	
	§	No. 356, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 9703006446
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: April 4, 2014

Decided: May 28, 2014

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

ORDER

This 28th day of May 2014, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, John C. Johnson, appeals from the Superior Court's June 17, 2013 denial of his motion for postconviction relief under Superior Court Criminal Rule 61 ("Rule 61"). We conclude there is no merit to the appeal and affirm the Superior Court's judgment.

(2) The record reflects that, on March 23, 1998, Johnson pled guilty to Aggravated Menacing and was sentenced to two years at Level V, suspended for two years at Level III. On June 24, 1998, Johnson was adjudged guilty of violation of probation ("VOP") and was sentenced,

effective June 23, 1998, to two years at Level V suspended for six months at Level IV followed by eighteen months at Level III. On December 1, 1999, Johnson was again adjudged guilty of VOP and was sentenced, effective August 26, 1999, to one year at Level V.

(3) On March 7, 2013, Johnson filed a motion for postconviction relief under Rule 61. Johnson claimed that his 1998 guilty plea and sentence were a “nullity” because the Superior Court lacked jurisdiction over the charges. Johnson also claimed that his defense counsel’s failure in 1998 to recognize the jurisdictional issue constituted ineffective assistance of counsel.

(4) Johnson’s motion was referred to a Commissioner. By order dated April 1, 2013, the Commissioner concluded that Johnson’s claims were without merit and recommended that the motion should be denied as procedurally time-barred under Rule 61(i)(1).¹ Johnson appealed from the Commissioner’s order. Thereafter, on June 17, 2013, the Superior Court entered an order denying Johnson’s postconviction motion for the reasons stated in the Commissioner’s order. This appeal followed.

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

(5) On appeal, Johnson continues to argue the merit of his claims that the Superior Court lacked jurisdiction over his charges and that his defense counsel's failure to recognize the jurisdictional defect denied him the effective assistance of counsel. Johnson further argues that the Superior Court erred by summarily denying the claims as procedurally barred. Given the nature of the claims (Johnson contends), the Superior Court should have credited the Rule 61(i)(5) exception to the procedural bar,² appointed counsel to represent Johnson, and conducted an evidentiary hearing.

(6) Having carefully considered the parties' briefs and the Superior Court order, we conclude that the Superior Court's judgment should be affirmed on the basis of the Superior Court's June 17, 2014 order denying Johnson's motion for postconviction relief as untimely under Rule 61(i)(1), without exception. We further affirm the denial of relief on the alternative basis³ that Johnson's application for post conviction relief is not permitted

² DEL. SUPER. CT. CRIM. R. 61(i)(5) (providing in pertinent part that the procedural time bar under Rule 61(i)(1) "shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation").

³ See *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (recognizing that this Court may affirm on the basis of a different rationale than that articulated by the trial court).

under Rule 61(a)(1), because Johnson completed the sentence under which relief was sought on August 25, 2000.⁴

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁴ DEL. SUPER. CT. CRIM. R. 61(a)(1). “Under Delaware law, once a criminal sentence is completed, any postconviction claim with respect to that conviction is moot because the defendant is no longer ‘in custody or subject to future custody’ as a result of that conviction.” *Paul v. State*, 2011 WL 3585623, at *1 (Del. Aug. 15, 2011).