IN THE SUPREME COURT OF THE STATE OF DELAWARE

AUGUSTUS H. EVANS, JR.,	§	
	§	No. 166, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County
	§	Cr. ID No. 0609011528A
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: August 5, 2013
Decided: October 10, 2013

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

O R D E R

This 10th day of October 2013, upon consideration of the appellant's opening brief and the appellee's motion to dismiss or alternatively to affirm,[1] it appears to the Court that:

(1) In 2007, the appellant, Augustus H. Evans, Jr., was convicted of several criminal offenses and was sentenced to a lengthy prison term. On direct appeal,

[1] The Court also has considered the appellant's "permissive writing" submitted on September 16, 2013 under SUPR. CT. R. 15(a)(vi).

we affirmed Evans' convictions.[2] We also affirmed the denial of Evans' first motion for postconviction relief.[3]

(2) This appeal is from the Superior Court's denials of the appellant's second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61") and the appellant's motion for rehearing. The appellee has filed a motion to dismiss the appeal as untimely filed. Having reviewed the record, we deny that motion. Evans' appeal from the denial of his second motion for postconviction relief was timely filed on March 28, 2013, after the Superior Court denied Evans' timely filed motion for rehearing in an order dated March 15, 2013.[4]

(3) On this appeal, Evans argues that, under *Martinez v. Ryan*, a 2012 decision of the United States Supreme Court, the Superior Court was required to—but did not—reevaluate his formerly unsuccessful claims for relief.[5] We reject Evans' contention that *Martinez v. Ryan* required the Superior Court to consider the merits of his formerly adjudicated claims. *Martinez v. Ryan* permits a federal court to review a "substantial" ineffective assistance of counsel claim on federal habeas review. It has no apparent application or relevance in this case.

---

[2] *Evans v. State*, 2009 WL 367728 (Del. Feb. 13, 2009) (Ridgely, J.).

[3] *Evans v. State*, 2009 WL 3656085 (Del. Nov. 4, 2009) (Jacobs, J.).

[4] *Preform Bldg. Components, Inc. v. Edwards*, 280 A.2d 697, 698 (Del. 1971).

[5] *Martinez v. Ryan*, ___ U.S. ___, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012).

(4) It is well-settled that when reviewing a denial of postconviction relief, this Court will address any applicable procedural bars before considering the merits of any claim for relief.[6] Having considered the Rule 61(i) procedural bars in this case, the Court has determined (as did the Superior Court) that Evans' second postconviction motion, which raised formerly adjudicated claims, is untimely under Rule 61(i)(1) and repetitive under Rule 61(i)(2). Given the absence of a colorable claim of manifest injustice because of a constitutional violation,[7] a newly-recognized retroactively applicable right,[8] or any indication that consideration of Evans' claims is warranted in the interest of justice,[9] we conclude that the Superior Court did not err when denying Evans' second motion for postconviction relief and motion for rehearing.

---

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

[7] *See* DEL. SUPER. CT. CRIM. R. 61(i)(5) (providing that the procedural bars of (i)(1) and (i)(2) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

[8] *See* DEL. SUPER. CT. CRIM. R. 61(i)(1) (providing that an untimely motion may be considered when the movant asserts a retroactively applicable right that has been newly recognized).

[9] *See* DEL. SUPER. CT. CRIM. R. 61(i)(2), (4) (barring repetitive motions and formerly adjudicated claims unless consideration is warranted in the interest of justice).

NOW, THEREFORE, IT IS ORDERED, that the appellee's motion to dismiss is DENIED. The motion to affirm is GRANTED, and the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice