IN THE SUPREME COURT OF THE STATE OF DELAWARE

JUAN J. ORTIZ,	§	
	§	No. 60, 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. 0107004046A
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: January 16, 2014
Decided: March 20, 2014

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

O R D E R

This 20th day of March 2014, upon consideration of the appellant's renewed motion for remand, the appellee's response to the motion, and the appellant's reply, it appears to the Court that:

(1) In August 2003, the appellant, Juan J. Ortiz, was convicted of capital murder and other offenses. On September 26, 2003, the Superior Court sentenced Ortiz to death. This Court affirmed Ortiz' conviction and death sentence on direct appeal.[1]

[1] *Ortiz v. State*, 869 A.2d 285 (Del. 2005).

(2) Ortiz appeals from the Superior Court's January 15, 2013 opinion denying his first motion for postconviction relief under Superior Court Criminal Rule 61 ("Rule 61"). The appeal was filed by Joseph A. Gabay, Esquire, who represented Ortiz in the Rule 61 proceedings.[2]

(3) By Order dated March 12, 2013, this Court suspended Mr. Gabay from the practice of law shortly after his arrest on charges of having sexually harassed two women. One of those women was Susan Borntreger, the mother of two of Ortiz' children. Thereafter, Patrick J. Collins, Esquire, entered his appearance on behalf of Ortiz.

(4) On July 15, 2013, Ortiz moved for a stay of appeal and remand "to give new counsel a reasonable opportunity to perfect all meritorious claims." The appellee, State of Delaware, opposed the motion.

(5) By Order dated August 30, 2013, the Court denied the motion to remand, but granted Ortiz a three-month stay "to allow counsel the opportunity to review the record below more thoroughly and to determine if there are any additional or modified postconviction claims that should have been, but were not, raised by prior counsel." The Court also granted Ortiz

[2] Mr. Gabay and Jennifer-Kate Aaronson, Esquire, were appointed as co-counsel to represent Ortiz. Midway through briefing, Ms. Aaronson withdrew from the case upon being appointed Chief Disciplinary Counsel.

the option, at the end of the three-month stay, to file either a "renewed motion to remand setting forth those specific claims requiring further review by the Superior Court" or the opening brief and appendix.

(6) At the end of the three-month period, Ortiz chose to file a renewed motion for remand. Ortiz seeks a remand to present additional evidence on the defense of Extreme Emotional Distress as well as "readily available mitigating evidence" of physical and sexual abuse, and for briefing on those claims. The State opposes the renewed motion for remand.

(7) Under the unique circumstances of this capital case and recognizing that this is Ortiz' "first and best opportunity" to seek postconviction relief,[3] the Court concludes that this matter should be remanded to the Superior Court for further proceedings.[4] On remand, the Superior Court should conduct an evidentiary hearing and allow briefing on the additional claims identified by Ortiz in his renewed motion for remand. The Superior Court should also request supplemental briefing on any claim that was not fully presented in the prior postconviction proceedings.

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[3] *Horne v. State*, 887 A.2d 973, 974-75 (Del. 2005).

[4] *See* DEL. SUPER. CT. CRIM. R. 61(i)(2) (barring repetitive postconviction motions).

NOW, THEREFORE, IT IS ORDERED that the renewed motion for remand is GRANTED. This matter is REMANDED to the Superior Court for further proceedings consistent with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs
Justice