IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS J. RAYMOND,	§
	§ No. 424, 2012
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0303015718
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 7, 2012 Decided: January 3, 2013

Before STEELE, Chief Justice, HOLLAND and JACOBS, Justices

ORDER

This 3rd day of January 2013, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Thomas J. Raymond, filed an appeal from the Superior Court's August 31, 2012 order adopting the April 18, 2012 report of the Superior Court Commissioner, which recommended that Raymond's second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground

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¹ Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

that it is manifest on the face of the opening brief that this appeal is without merit.² We agree and affirm.³

- (2) The record before us reflects that, in January 2006, Raymond was found guilty in a bench trial of Assault in the Second Degree, Resisting Arrest, Criminal Impersonation and Possession of Drug Paraphernalia. He was declared a habitual offender⁴ and was sentenced on those convictions to a total of eleven years of Level V incarceration, to be suspended after eight years for three years of Level III probation.⁵ Raymond's convictions were affirmed by this Court on direct appeal.⁶ Raymond filed his first postconviction motion in June 2007. Because Raymond failed to file his amended postconviction motion in a timely manner, the Superior Court deemed the motion to be withdrawn with prejudice. Raymond did not file an appeal from the Superior Court's judgment.
- (3) In this appeal from the Superior Court's denial of his second motion for postconviction relief, Raymond claims that a) his trial counsel

² Supr. Ct. R. 25(a).

³ To the extent that Raymond seeks to appeal the Superior Court's July 27, 2012 interlocutory order denying his motion to amend his postconviction motion, he has failed to invoke the jurisdiction of this Court, since this Court has no authority to consider criminal interlocutory appeals. Del. Const. art. IV, §11(1) (b); *Gottlieb v. State*, 697 A.2d 400, 401 (Del. 1997). Therefore, any arguments presented in connection with any such appeal will not be addressed by this Court.

⁴ Del. Code Ann. tit. 11, §4214(a).

⁵ Raymond also was sentenced in the same sentencing order for unrelated escape and assault convictions.

⁶ Raymond v. State, 2007 WL 666778 (Del. Mar. 6, 2007).

provided ineffective assistance; b) his due process rights were violated during the trial proceedings; c) various of his other constitutional rights were violated during the trial proceedings; d) he is being unlawfully imprisoned; and e) there were numerous trial and pretrial errors.

- (4) Both prior to and subsequent to the filing of the instant postconviction motion, Raymond has filed numerous motions and petitions in the Superior Court, a number of which have addressed the issues he has raised in these proceedings. In 2007, he filed a motion for sentence modification. In 2010, he filed a motion to dismiss alleging violations of various of his constitutional rights. In 2011, he filed a motion for reduction of sentence alleging claims of ineffective assistance of counsel and various constitutional violations as well as a motion for the appointment of counsel in connection with his anticipated second postconviction motion. In 2012, Raymond filed a petition for a writ of habeas corpus. None of Raymond's motions and/or petitions has been successful.
- (5) It is well-settled that the Superior Court must address the procedural requirements of Rule 61 before considering the merits of a postconviction motion.⁷ If a time or procedural bar exists, the Superior

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⁷ Younger v. State, 580 A.2d 552, 554 (Del. 1990).

Court should not consider the merits of the motion.⁸ As the Superior Court determined below, Raymond's claims are all time and procedurally barred pursuant to Rule 61. Because Raymond's convictions became final in 2007, his most recent postconviction motion, which was filed in 2012, is clearly time-barred pursuant to Rule 61(i) (1).

In addition, because the record reflects that the claims raised in (6) Raymond's most recent postconviction motion already have been adjudicated in previous motions filed in the Superior Court, they are procedurally barred pursuant to Rule 61(i) (4). To the extent that Raymond raises claims in his most recent postconviction motion that he failed to raise previously, any such claims are procedurally barred pursuant to Rule 61(i) (2) and (3). Moreover, because Raymond has not demonstrated that any formerly adjudicated claim should be reconsidered in the interest of justice under Rule 61(i) (4) and has not demonstrated a colorable claim of a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction under Rule 61(i) (5), his claims are not exempted from the time and procedural bars. We conclude, therefore, that

⁸ Id.

the Superior Court neither erred nor abused its discretion when it denied Raymond's second postconviction motion on procedural grounds.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.⁹

BY THE COURT:

/s/ Randy J. Holland
Justice

⁹ Raymond's request for remand, filed on December 3, 2012, is hereby denied as moot.