IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEROY COOK, SR.,	§	
	§	No. 510, 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. 0608025757
	§	
Plaintiff Below-Appellee.	§	
	§	

Submitted: November 8, 2012
Decided: December 10, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

O R D E R

This 10th day of December 2012, 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, Leroy Cook, Sr., filed an appeal from the Superior Court's August 21, 2012 order summarily dismissing his fifth motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the

Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.[1] We agree and affirm.

(2) The record before us reflects that, in January 2009, Cook entered a plea of guilty to one count of Rape in the Second Degree. He was sentenced to 25 years of Level V incarceration, to be suspended after 12 years for probation. Cook did not file a direct appeal. In October 2009, Cook filed his first motion for postconviction relief. After reviewing Cook's motion, his counsel's affidavit and the State's response, the Superior Court denied Cook's motion. This Court affirmed the Superior Court's judgment.[2] This Court also affirmed the Superior Court's denial of his three subsequent postconviction motions.[3]

(3) In this appeal from the Superior Court's denial of his fifth postconviction motion, Cook claims that the Superior Court erred when it summarily dismissed his motion because a) there was no specific rationale provided; and b) the argument that he was denied his right to file a direct appeal had never been raised previously and, therefore, the merits of that argument should have been considered.

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[1] Supr. Ct. R. 25(a).
[2] *Cook v. State*, 2010 WL 682545 (Del. Feb. 26, 2010).
[3] *Cook v. State*, 2010 WL 3565495 (Del. Sept. 14, 2010); *Cook v. State*, 2011 WL 880847 (Del. Mar. 10, 2011); *Cook v. State*, 2012 WL 3096623 (Del. July 30, 2012).

(4) Delaware law requires that, when reviewing a postconviction motion, the Superior Court first determine whether the procedural requirements of Rule 61 have been met before considering the substantive merits of the claims.[4] While the Superior Court's August 21, 2012 order does not explicitly state that Cook's motion is procedurally barred, it is clear that that is the basis for the Superior Court's decision.[5] As such, we conclude that Cook's first claim is without merit.

(5) Moreover, the Superior Court properly refused to reach the merits of Cook's second claim because it was never presented in any of his previous postconviction motions and, therefore is procedurally barred pursuant to Rule 61(i) (2) in the absence of any evidence that the claim should be considered in the interest of justice. Therefore, we conclude that Cook's second claim also is without merit.

(6) 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.

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[4] *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996).

[5] The Superior Court references its previous February 24, 2012 order, which denied Cook's fourth postconviction motion as procedurally barred. Super. Ct. Crim. R. 61.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice