IN THE SUPREME COURT OF THE STATE OF DELAWARE

GERRON LINDSEY,	§	
	§	No. 373, 2013
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	No. 0002019767
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: December 2, 2013 Decided: January 9, 2014

Before HOLLAND, JACOBS, and RIDGELY, Justices.

ORDER

On this 9th day of January 2014, it appears to the Court that:

(1) Defendant-Below/Appellant Gerron Lindsey appeals from a denial of a Rule 61 Motion for Postconviction Relief following his guilty but mentally ill ("GBMI") plea for First Degree Murder. Lindsey raises one claim on appeal. Lindsey contends that his attorney's performance before his trial causing him to accept a plea of GBMI violated his Sixth Amendment right to effective assistance of counsel. He argues that the Superior Court erred in denying his motion for postconviction relief. We find no merit to Lindsey's appeal. We affirm on the independent and alternative ground that Lindsey's claim was procedurally barred.

- (2) Lindsey was indicted in 2000 on two counts of first degree murder, one count of attempted murder first degree, two counts of first degree robbery, five counts of possession of a firearm during the commission of a felony, and one count of possession of a firearm by a person prohibited. The State was seeking the death penalty. Lindsey was originally represented by the Public Defender, but the court later assigned conflict counsel Anthony Figliola and later Sheryl Rush-Milstead to represent him. Prior to trial, Lindsey was offered a plea agreement, allowing him to plead to one count of murder first degree, removing the remaining charges, and eliminating the death penalty. Figliola and Rush-Milstead tried to persuade Lindsey to accept the offer, but he refused.
- (3) During jury selection, the State presented a revised plea offer, which would allow Lindsey to plead GBMI to first degree murder in exchange for the remaining charges being dropped and a life sentence. During her discussions with Lindsey, Rush-Milstead told Lindsey that his acceptance of the new offer would mean that he could serve a significant portion of his life sentence at the Delaware Psychiatric Center instead of in prison. After consulting with both of his attorneys, Lindsey chose to accept the new plea offer. The trial court conducted a colloquy with Lindsey and accepted his GBMI plea. During this colloquy, Lindsey

explained that he understood the plea and the potential sentence.¹ The court accepted the plea and sentenced Lindsey to life in prison.

- (4) Shortly after his sentencing hearing, Lindsey filed a timely Rule 61 motion for postconviction relief alleging, *inter alia*, that his counsel had erroneously represented that he would serve his sentence in a mental hospital. The trial court denied his motion. We affirmed this decision on appeal.² Since this first Rule 61 motion, Lindsey has filed six additional Rule 61 motions that have been denied. In his eighth motion for postconviction relief, Lindsey argued that Rush-Milstead's representation was ineffective when she told him that he would serve a significant portion of his life sentence at the Delaware Psychiatric Center. He contended that he would not have accepted the GBMI plea had he known that he would serve his sentence in prison.
- (5) The trial court appointed Lindsey new counsel, ordered Rush-Milstead to respond to Lindsey's accusations, and assigned the claim to a Commissioner. The Commissioner found that Lindsey's eighth motion for postconviction relief was not procedurally barred under Rule 61 because it fell within the manifest injustice exception. At an evidentiary hearing, Rush-Milstead explained that she remembered telling Lindsey that he would spend "a significant portion" of his life

¹ Lindsey quickly sought to withdraw his GBMI plea, but the court found that Lindsey had voluntarily made the plea and merely changed his mind.

² Lindsev v. State, 813 A.2d 1140, 2003 WL 98784 (Del. 2003).

sentence at the Delaware Psychiatric Center. She did not promise Lindsey that he would serve his sentence at the Delaware Psychiatric Center, but she believed that he would avoid prison for much of his sentence. Rush-Milstead further explained that this advice was her "best guess" at a likely sentence and believed that her comments could have induced Lindsey to accept the plea. Figliola also testified at the evidentiary hearing and recalled that he did not make any representations that Lindsey would remain at the Delaware Psychiatric Center as opposed to prison.

- (6) After hearing all of this testimony, the Commissioner recommended that Lindsey's motion for postconviction relief be denied. The Commissioner's Report explained that Lindsey's GBMI plea was voluntary and that Rush-Milstead's representation was not ineffective. The Superior Court adopted the Report and denied Lindsey's motion on the basis of the Commissioner's reasoning. This appeal followed.
- (7) A Superior Court's denial of a motion for post-conviction relief is reviewed by this Court for an abuse of discretion.³ An abuse of discretion exists where a court exceeds "the bounds of reason in view of the circumstances," or "so ignored recognized rules of law or practice so as to produce injustice." All

³ Velasquez v. State, 993 A.2d 1066, 1069 (Del. 2010) (citing Dawson v. State, 673 A.2d 1186, 1190 (Del. 1996)).

⁴ Lilly v. State, 649 A.2d 1055, 1059 (Del. 1994) (quoting Firestone Tire & Rubber Co. v. Adams, 541 A.2d 567, 570 (Del. 1988)).

questions of law or issues involving a defendant's constitutional rights are reviewed *de novo*.⁵

- (8) Before we consider the merits of an underlying claim for postconviction relief, we first apply the rules governing the procedural requirements of Rule 61 of the Superior Court Rules of Criminal Procedure.⁶ Rule 61(i)(1) explains that "[a] motion for postconviction relief may not be filed more than one year after the judgment of conviction is final."⁷ But if the basis of postconviction relief is founded on a retroactive right recognized by this Court or the U.S. Supreme Court after the judgment of conviction is final, then the defendant has one year to file a claim from the creation of that new right.⁸ Further, where a ground for relief has been previously adjudicated in any proceeding, it is barred from reconsideration unless the claim should be heard in the interest of justice.⁹ This is because "a defendant is not entitled to have a court re-examine an issue that has been previously resolved 'simply because the claim is refined or restated."¹⁰
- (9) In this case, the Superior Court erred in deciding that Lindsey's eighth motion for postconviction relief was not procedurally barred. In his first motion

⁵ Velasquez, 993 A.2d at 1069 (citing *Dawson*, 673 A.2d at 1190); Flonnory v. State, 893 A.2d 507, 535 (Del. 2006) (citing Grace v. State, 658 A.2d 1011, 1015 (Del. 1995)).

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

⁷ Super. Ct. Crim. R. 61(i)(1).

⁸ *Id*.

⁹ Super. Ct. Crim. R. 61(i)(4).

¹⁰ Skinner v. State, 607 A.2d 1170, 1172 (Del. 1992) (quoting Riley v. State, 585 A.2d 719, 721 (Del. 1990), abrogated on other grounds by Morgan v. Illinois, 504 U.S. 719 (1992)).

for postconviction relief in 2002, Lindsey argued that Rush-Milstead "had erroneously represented that he would serve his sentence in a mental hospital rather than in prison." This 2002 claim is substantively identical to Lindsey's current claim that Rush-Milstead was ineffective for telling him that he would serve a significant portion of his sentence at the Delaware Psychiatric Center rather than in prison. By characterizing Rush-Milstead's statements as ineffective assistance of counsel, Lindsey has merely refined or restated one of his original postconviction claims. This claim is procedurally barred under Rule 61.

- (10) Lindsey argues that his claim is not barred because his 2002 claim did not require a response from Rush-Milstead. Although the trial court did not order an evidentiary hearing in the 2002 proceeding, the court still considered the merits of Lindsey's claim. Therefore, the failure to obtain a response from Rush-Milstead in 2002 does not mean that Lindsey's claim is not barred under Rule 61.
- (11) Finally, Lindsey argues that his claim should fall within the interest of justice exception to Rule 61's procedural bar. As this Court has explained, the "interest of justice" exception provides two pathways to demonstrate that a claim is not procedurally barred. The exception applies when (1) "the previous ruling was clearly in error or there has been an important change in circumstances, in particular, the factual basis for issues previously posed," or (2) there is an

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¹¹ Lindsey, 2003 WL 98784, at *1 n.4.

"equitable concern of preventing injustice." But the interest of justice exception is narrow and will only be applied in limited circumstances. 13

(12) Lindsey's claim does not satisfy Rule 61's interest of justice exception. Lindsey argues that because he has made a colorable claim for ineffective assistance of counsel under the Sixth Amendment, his claim should not be barred. This argument lacks merit. At best, Lindsey has refined the same claim that he made in his first motion for postconviction relief. This claim is procedurally barred. Accordingly, the Superior Court did not abuse its discretion in denying Lindsey's eighth motion for postconviction relief.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹² Weedon v. State, 750 A.2d 521, 527–28 (Del. 2000).

¹³ Cf. Younger, 580 A.2d at 555 (noting that the fundamental fairness exception of Rule 61(i)(5) "is a narrow one and has been applied only in limited circumstances").