

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HARRY L. SAMUEL,	§	
	§	No. 79, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 93005924DI
Appellee.	§	

Submitted: May 20, 2013

Decided: July 11, 2013

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 11th day of July 2013, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm filed pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Harry L. Samuel, filed this appeal from the Superior Court’s March 13, 2013 denial of his fourth motion for postconviction relief as procedurally barred pursuant to Superior Court Criminal Rule 61(i) (“Rule 61(i)").¹ The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is

¹ See Del. Super. Ct. Crim. R. 61(i) (listing procedural bars to relief and exceptions to those bars).

manifest on the face of Samuel's opening brief that the appeal is without merit. We agree and affirm.

(2) In 1994, a Superior Court jury convicted Samuel of Assault in the First Degree, Assault in the Second Degree, two counts of Assault in a Detention Facility, and four counts of Possession of a Deadly Weapon During the Commission of a Felony. On appeal, this Court ordered the two assault convictions merged with the two counts of assault in a detention facility and remanded the case for resentencing.² On appeal after resentencing, the sentences were affirmed.³

(3) Over the past ten years, Samuel has filed three unsuccessful motions for postconviction relief and an unsuccessful petition for federal habeas corpus relief.⁴ Samuel has also moved thrice, without success, for a reduction of sentence.⁵

(4) In his fourth motion for postconviction relief, the denial of which forms the basis of this appeal, Samuel alleged claims of ineffective

² *Samuel v. State*, 1996 WL 191068 (Del. Apr. 10, 1996).

³ *Samuel v. State*, 1997 WL 317362 (Del. Apr. 16, 1997).

⁴ *Samuel v. Carroll*, 2004 WL 1368845 (D. Del. June 9, 2004); *Samuel v. State*, 2006 WL 3230350 (Del. Nov. 9, 2006); *State v. Samuel*, 2007 WL 3288616 (Del. Super. Nov. 7, 2007); *State v. Samuel*, 2008 WL 2174414 (Del. Super. May 21, 2008), *aff'd*, 2008 WL 5264275 (Del. Dec. 18, 2008).

⁵ *Samuel v. State*, Del. Super., Def. ID No. 93005924DI (Sep. 10, 2003) (order); *Samuel v. State*, 2010 WL 424236 (Del. Feb. 3, 2010); *Samuel v. State*, 2010 WL 3245109 (Del. Aug. 17, 2010).

assistance of counsel, actual innocence, double jeopardy, failure to merge weapons charges, denial of competency evaluation, and failure to have DNA evidence tested. When reviewing a motion for postconviction relief, the Superior Court must consider the procedural requirements of Rule 61 before addressing any substantive issues.⁶ In this case, after reviewing Samuel's postconviction motion, a Commissioner issued a report recommending that Samuel's postconviction motion be summarily dismissed as procedurally barred. After *de novo* review of the matter, including Samuel's untimely-filed objections to the Commissioner's report, the Superior Court adopted the Commissioner's report and denied Samuel's motion. This appeal followed.

(5) Having carefully reviewed the parties' positions on appeal and the Superior Court record, the Court concludes that the Superior Court properly determined under Rule 61 that Samuel's fourth postconviction motion was untimely,⁷ repetitive,⁸ and raised claims that were either

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

⁷ See Del. Super. Ct. Crim. R. 61(i)(1) (barring postconviction motion filed more than three years after judgment of conviction is final) (amended 2005 to reduce filing period to one year).

⁸ See Del. Super. Ct. Crim. R. 61(i)(2) (barring any ground for relief not asserted in a prior postconviction proceeding).

procedurally defaulted⁹ or formerly adjudicated.¹⁰ On appeal, Samuel has not demonstrated that any of his claims warrants further consideration “in the interest of justice” or because of “a miscarriage of justice.”¹¹ The Court therefore concludes that Samuel’s untimely and repetitive fourth postconviction motion raising formerly adjudicated and/or procedurally defaulted claims was properly denied.

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/ Randy J. Holland
Justice

⁹ See Del. Super. Ct. Crim. R. 61(i)(3) (barring claim not previously raised absent cause for relief from the procedural default and prejudice).

¹⁰ See Del. Super. Ct. Crim. R. 61(i)(4) (barring formerly adjudicated claim).

¹¹ See Del. Super. Ct. Crim. R. 61(i)(2), (i)(4) (barring claim unless consideration is warranted in the interest of justice); Del. Super. Ct. Crim. R. 61(i)(5) (providing that the procedural bars of (i)(1), (i)(2) and (i)(3) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).