

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|---|---------------------------------|
| DENNIS FRAZIER, | § | |
| | § | No. 387, 2013 |
| Defendant Below, | § | |
| Appellant, | § | Court Below—Superior Court |
| | § | of the State of Delaware in and |
| v. | § | for New Castle County |
| | § | |
| STATE OF DELAWARE, | § | |
| | § | |
| Plaintiff Below, | § | Cr. ID No. 30805884DI |
| Appellee. | § | |

Submitted: October 22, 2013
Decided: January 21, 2014

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

ORDER

This 21st day of January 2014, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) The appellant, Dennis Frazier (“Frazier”), filed this appeal from the Superior Court’s June 19, 2013 denial of his second motion for postconviction relief under Superior Court Criminal Rule 61. The appellee, State of Delaware, has moved to affirm the Superior Court’s judgment.

(2) In 1990, following a Superior Court jury trial, Frazier was convicted of Unlawful Sexual Intercourse in the First Degree, Kidnapping in the First Degree, and two weapon offenses, and was sentenced to life

imprisonment. On direct appeal in 1992, we affirmed the judgment of the Superior Court,¹ and in 1996 we affirmed the denial of Frazier's first motion for postconviction relief.²

(3) On March 6, 2013, Frazier filed a second motion for postconviction relief. By memorandum opinion dated June 19, 2013, the Superior Court dismissed the motion as procedurally barred.³ This appeal followed.

(4) In his opening brief on appeal, Frazier asserts that, because he did not have counsel on his first postconviction motion, and because the Superior Court changed its mind with respect to conducting an evidentiary hearing on his first postconviction motion, he should be granted the opportunity, under *Holmes v. State*⁴ and *Martinez v. Ryan*,⁵ to resubmit his prior postconviction claims with the assistance of appointed counsel. Having carefully considered the parties' positions on appeal, we conclude that Frazier has failed to establish a legal or equitable basis to reexamine his

¹ *Frazier v. State*, 1992 WL 135149 (Del. Mar. 13, 1992).

² *Frazier v. State*, 1996 WL 69741 (Del. Jan. 19, 1996).

³ *State v. Frazier*, 2013 WL 3339406 (Del. Super. June 19, 2013).

⁴ *See Holmes v. State*, 2013 WL 2297072 (Del. May 23, 2013) (holding that Superior Court abused its discretion when denying motion for appointment of counsel to assist defendant in first postconviction proceeding).

⁵ *See Martinez v. Ryan*, ___ U.S. ___, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012) (holding that inadequate assistance of counsel during initial postconviction proceeding may establish cause to consider defendant's claim of ineffective assistance of counsel at trial).

prior postconviction claims. We further conclude that the summary dismissal of Frazier's second postconviction motion should be affirmed on the basis of the Superior Court's well-reasoned memorandum opinion of June 19, 2013.⁶

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

⁶ See *State v. Frazier*, 2013 WL 3339406 (Del. Super. June 19, 2013) (denying second motion for postconviction relief).