

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEENAN E. BACON,	§	
	§	No. 388, 2011
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0512011932
Appellee.	§	

Submitted: October 31, 2011
Decided: January 23, 2012

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

ORDER

This 23rd day of January 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 appellant, Keenan E. Bacon, filed this appeal from the Superior Court’s denial of his first motion for postconviction relief under Superior Court Criminal Rule 61(“Rule 61”). The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the

ground that it is manifest on the face of Bacon's opening brief that the appeal is without merit.¹

(2) The record reflects that Bacon was arrested and charged in the December 2005 fatal shooting of Michael Cannon. In April 2006, under a pre-indictment plea agreement, Bacon pled guilty to Manslaughter, Possession of a Firearm During the Commission of a Felony, and Assault in the Third Degree.

(3) On June 23, 2006, after a presentence investigation, the Superior Court sentenced Bacon to a total of thirty years at Level V, seven years mandatory, suspended after fifteen years for decreasing levels of supervision. Bacon did not file a direct appeal in this Court. He did, however, file a series of unsuccessful motions challenging his sentence in the Superior Court.²

(4) Bacon filed his motion for postconviction relief on June 9, 2011. Bacon alleged that his defense counsel was ineffective and that his guilty plea was involuntary. By order dated July 7, 2011, the Superior Court summarily dismissed Bacon's postconviction motion as procedurally time-barred. This appeal followed.

¹ Del. Supr. Ct. R. 25(a).

² Most recently, by Order dated August 31, 2010, we affirmed the Superior Court's October 2, 2009 denial of Bacon's third motion for modification/correction of sentence. *Bacon v. State*, 2010 WL 3420364 (Del. Supr.).

(5) It is well-settled that when reviewing the Superior Court’s denial of a postconviction motion, this Court first must consider the procedural requirements of Rule 61 before addressing any substantive issues.³ In this case, having applied the procedural requirements of Rule 61, the Court has concluded, as did the Superior Court, that Bacon’s motion for postconviction relief is procedurally time-barred under Rule 61(i)(1) because it was not filed within one year after his conviction became final.⁴

(6) The Court has further concluded that Bacon is not entitled to relief under Rule 61(i)(5), which provides that the time bar under Rule 61(i)(1) does not apply “to a colorable claim that there was a miscarriage of justice because of a constitutional violation.”⁵ In this case, Bacon has not demonstrated, and the record does not reflect, that his defense counsel was ineffective.⁶ Nor does the record support Bacon’s claim that his guilty plea was involuntary.⁷ Absent clear and convincing evidence to the contrary, Bacon is bound by his representations on the truth-in-sentencing guilty plea

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁴ Del. Super. Ct. Crim. R. 61(i)(1). Bacon’s conviction became final on July 24, 2006, upon the expiration of the thirty-day appeal period. Del. Super. Ct. Crim. R. 61(m)(1).

⁵ Del. Super. Ct. Crim. R. 61(i)(5).

⁶ In the context of a guilty plea, a Rule 61 movant must demonstrate that, but for counsel’s alleged errors, the movant would not have pleaded guilty and would have insisted on going to trial. *See Albury v. State*, 551 A.2d 53, 59 (Del. 1988) (citing *Hill v. Lockhart*, 474 U.S. 52, 58 (1985)).

⁷ The relevant record in this case consists of the written plea agreement and truth-in-sentencing guilty plea form signed by Bacon on April 6, 2006.

form that he “freely and voluntarily decided to plead guilty,” was not forced to enter the plea, and was satisfied with his defense counsel’s representation.⁸

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

BY THE COURT:

/s/ Carolyn Berger
Justice

⁸ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).