IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEMARIS WALKER,	§	
	§	No. 274, 2012
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. 0203014277
Appellee.	§	

Submitted: July 2, 2012

Decided: September 27, 2012

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

ORDER

This 27th day of September 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, Demaris Walker, filed this appeal from the Superior Court's denial of his second motion for postconviction relief pursuant to 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 Walker's opening brief that the appeal is without merit.¹

- (2) The record reflects that Walker was convicted in February 2003 of three counts of Rape in the Second Degree, and one count each of Attempted Robbery in the First Degree, Burglary in the First Degree, Theft from a Senior, and Conspiracy in the Second Degree. By Order dated December 18, 2003, we affirmed Walker's convictions.²
- (3) Walker filed his first motion for postconviction in 2006. Walker alleged that the trial judge erred when admitting "illegal evidence" and when failing to disqualify an allegedly biased juror. Also, Walker alleged that his defense counsel was ineffective and that the prosecutor solicited perjured testimony from Walker's co-defendant. By order dated December 20, 2006, after considering defense counsel's affidavit, the State's response to the motion, and Walker's reply, the Superior Court denied Walker's ineffective assistance of counsel claims on the merit and the remaining claims as procedurally barred pursuant to Rule 61(i)(3).³ By

¹ Del. Supr. Ct. R. 25(a).

² Walker v. State, 2003 WL 22998847 (Del. Supr.)

³ State v. Walker, 2006 WL 3851228 (Del. Super. Ct.).

Order dated September 20, 2007, we affirmed the Superior Court's denial of Walker's first postconviction motion.⁴

- (4) Walker filed his second postconviction motion in 2011. In overlapping claims of ineffective assistance of counsel, trial court error and prosecutorial misconduct, Walker alleged illegal search and seizure, improper admission of evidence including statements made to the police by his minor sister, failure to present alibi defense and to give an alibi instruction, conflict of interest of trial counsel requiring appointment of new counsel, and "failure to disclose or inquire mental examination" of Walker and his co-defendant. By order dated April 23, 2012, after considering defense counsel's affidavit, the State's response to the motion, and Walker's reply, the Superior Court denied the motion after concluding that all of the claims were barred as formerly adjudicated pursuant to Rule 61(i)(4) and/or were barred under Rule 61(i)(1), (2) and/or (3).⁵ This appeal followed.
- (5) When considering a motion for postconviction relief under Rule 61, the Superior Court must apply the procedural requirements of the rule before reaching the merits of the claims.⁶ Similarly, on appeal from the Superior Court's denial of postconviction relief, this Court will not consider

⁴ Walker v. State, 2007 WL 2744920 (Del. Supr.).

⁵ *State v. Walker*, 2012 WL 2337316 (Del. Super. Ct.).

⁶ Bailey v. State, 588 A.2d 1121, 1127 (Del. 1991).

the merit of a postconviction claim unless the Superior Court improperly applied the procedural requirements of Rule 61.⁷

- (6) Having carefully considered the parties positions on appeal and the Superior Court record, the Court agrees that Walker's second postconviction motion is procedurally barred for the reasons stated by the Superior Court. The Superior Court determined, and we agree, that the postconviction motion is repetitive under Rule 61(i)(2), and that the claims are barred under Rule 61(i)(4) as formerly adjudicated. On appeal, Walker has not demonstrated that the repetitive motion and/or the formerly adjudicated claims should be reconsidered in the interest of justice.
- (7) The Superior Court further determined, and we agree, that the motion is barred under Rule 61(i)(1) because it was not filed within three years of when Walker's convictions became final, and that the claims are barred under Rule 61(i)(3) because Walker could have previously raised them but did not. Walker can overcome these bars only if, pursuant to Rule 61(i)(1), he timely alleges a newly recognized, retroactively applicable right, which he has not done, or he can show, under Rule 61(i)(5), that exceptional review is warranted because of a miscarriage of justice. In this case, the Court concludes that Walker cannot demonstrate that his second

⁷ Younger v. State, 580 A.2d 552, 554 (Del. 1990).

postconviction motion warrants consideration because of a miscarriage of justice.

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