

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |   |                                 |
|--------------------|---|---------------------------------|
| DONALD F. BASS,    | § |                                 |
|                    | § | No. 257, 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. 9607012102           |
| Appellee.          | § |                                 |

Submitted: March 26, 2014

Decided: April 22, 2014

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

**O R D E R**

This 22<sup>nd</sup> day of April 2014, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) In 1998, the appellant, Donald F. Bass, was convicted of multiple counts of Robbery in the First Degree and related offenses and was sentenced to life in prison plus a term of years. This Court affirmed Bass' convictions and sentence on direct appeal.<sup>1</sup>

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<sup>1</sup> *Bass v. State*, 2000 WL 1508724 (Del. Sept. 13, 2000).

(2) This appeal is from the Superior Court’s summary dismissal of Bass’ fourth motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”).<sup>2</sup> It is well-settled that when reviewing a denial of postconviction relief, this Court will address any procedural bars before considering the merits of any claim for relief.<sup>3</sup>

(3) Having considered the Rule 61(i) procedural bars in this case, the Court has determined that Bass’ fourth postconviction motion is procedurally barred as untimely,<sup>4</sup> repetitive,<sup>5</sup> defaulted,<sup>6</sup> and formerly adjudicated.<sup>7</sup> In the absence of a constitutional violation,<sup>8</sup> a newly recognized retroactively applicable right,<sup>9</sup> or any indication that

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<sup>2</sup> *State v. Bass*, 2013 WL 2920431 (Del. Super. Ct. Apr. 22, 2013).

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

<sup>4</sup> See Del. Super. Ct. Crim. R. 61(i)(1) (barring claim filed more than three years after judgment is final) (amended 2005 to reduce filing period to one year).

<sup>5</sup> See Del. Super. Ct. Crim. R. 61(i)(2) (barring any ground for relief not asserted in a prior postconviction proceeding).

<sup>6</sup> See Del. Super. Ct. Crim. R. 61(i)(3) (barring a claim not previously raised absent cause for relief from the procedural default and prejudice).

<sup>7</sup> See Del. Super. Ct. Crim. R. 61(i)(4) (barring formerly adjudicated claim).

<sup>8</sup> See Del. Super. Ct. Crim. R. 61(i)(5) (providing in pertinent part that the procedural bar of (i)(1) and (2) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

<sup>9</sup> See Del. Super. Ct. Crim. R. 61(i)(1) (providing that an untimely motion may be considered when the movant asserts a retroactively applicable right that has been newly recognized).

consideration of Bass' claims is warranted in the interest of justice,<sup>10</sup> we conclude that the Superior Court did not err when summarily dismissing Bass' fourth motion for postconviction relief.

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

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<sup>10</sup> See Del. Super. Ct. Crim. R. 61(i)(2), (4) (barring claim unless consideration is warranted in the interest of justice).