



IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |   |                                   |
|--------------------|---|-----------------------------------|
| CORY J. HOLMES,    | § |                                   |
|                    | § |                                   |
| Defendant Below,   | § | No. 350, 2012                     |
| Appellant,         | § |                                   |
|                    | § | Court Below: Superior Court of    |
| v.                 | § | the State of Delaware, in and for |
|                    | § | New Castle County                 |
| STATE OF DELAWARE, | § |                                   |
|                    | § | Cr. I.D. No. 0901020659           |
| Plaintiff Below,   | § |                                   |
| Appellee.          | § |                                   |

Submitted: May 15, 2013

Decided: May 23, 2013

Before **STEELE**, Chief Justice, **HOLLAND**, **BERGER**, **JACOBS**, and **RIDGELY**, Justices, constituting the Court *en Banc*.

**ORDER**

This 23<sup>rd</sup> day of May 2013, upon consideration of the briefs of the parties, the parties' contentions during oral argument, and the record in this case, it appears to the Court that:

1. Cory J. Holmes, the defendant-below ("Holmes"), appeals from two June 7, 2012 Superior Court orders separately denying his motion for postconviction relief and motion for appointment of counsel. In October 2011, Holmes, *pro se*, filed a Superior Court Rule of Criminal Procedure Rule 61 postconviction motion ("Rule 61 motion") and a motion for appointment of counsel. The State opposed both motions. On June 7, 2012, based on a

Commissioner's Report and Recommendation, the Superior Court entered orders denying Holmes' motions. On June 26, 2012, Holmes timely appealed from those orders to this Court.

2. During the pendency of Holmes' appeal, the Superior Court, by order dated May 6, 2013, amended Rule 61 of its Rules of Criminal Procedure, to provide that the court "will appoint counsel for an indigent movant's first postconviction proceeding." The amended Rule further specifies that it "shall be effective on May 6, 2013 and shall apply to postconviction motions filed on or after that date."

3. Although Holmes filed his Rule 61 motion before the effective date of the Superior Court's Rule 61 amendment, we reach the same result even if the amended Rule were applicable to this case. By denying Holmes' motion for appointment of counsel, the court abused its discretion.<sup>1</sup> Having been denied the assistance of counsel, Holmes had no adequate opportunity to present a potentially cognizable claim in his Rule 61 motion. Because we reverse and remand to the Superior Court to appoint counsel for Holmes to pursue his first Rule 61

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<sup>1</sup> See *Hartmann v. State*, 19 A.3d 301, 2011 WL 1486567, at \*2 (Del. Apr. 19, 2011) (TABLE) (reviewing Superior Court's denial of defendant's motion for appointment of counsel for abuse of discretion).

postconviction motion, we decline to address the merits of his Rule 61 motion on this appeal.<sup>2</sup>

NOW, THEREFORE, IT IS ORDERED that the June 7, 2012 judgment of the Superior Court denying Holmes' Rule 61 motion is REVERSED, and that the case is REMANDED for further proceedings in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>2</sup> See *id.* at \*1 (reviewing Superior Court's denial of postconviction relief for abuse of discretion).