

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EARL BRADLEY,	§
	§
Defendant Below,	§ No. 221, 2017
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID No. 0912011155 (S)
	§
Plaintiff Below,	§
Appellee.	§

Submitted: December 1, 2017

Decided: January 16, 2018

Before **STRINE**, Chief Justice; **VALIHURA**, and **VAUGHN**, Justices.

ORDER

This 16th day of January 2018, after careful consideration of the parties' briefs, the record below, and the appellant's motion for decision *en banc*, we first conclude that the motion for decision *en banc* should be denied. None of the criteria set forth in Supreme Court Internal Operating Procedure X for determination *en banc* apply here.¹ We next conclude that the Superior Court's summary dismissal of the appellant's second motion for postconviction relief and denial of the appellant's

¹ Supreme Court Internal Operating Procedure X provides the Chief Justice may order any matter for determination *en banc* upon the briefs or oral argument. Determination *en banc* is required in the following circumstances: (i) direct appeals and motions for postconviction relief in death penalty cases; (ii) when a panel of the Court indicates possible disagreement; (iii) when there is a reasonable likelihood a previous decision of the Court may be modified or overruled; (iv) when approved by two justices; and (v) when required by Court rule or by two-thirds vote of the General Assembly.

motion for judicial recusal should be affirmed on the basis of, and for the reasons in, the Superior Court's well-reasoned order dated May 18, 2017.² Contrary to the appellant's contentions, his ineffective assistance of postconviction counsel claims were subject to the requirements of Superior Court Criminal Rule 61(d)(2).³

NOW, THEREFORE, IT IS ORDERED that motion for decision *en banc* is DENIED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Leo E. Strine, Jr.

Chief Justice

² *State v. Bradley*, 2017 WL 2209896 (Del. May 18, 2017).

³ *See Durham v. State*, 2017 WL 5450746, at *2 (Del. Nov. 13, 2017) (holding the appellant had to satisfy the requirements of Rule 61(d)(2) to avoid summary dismissal of his second postconviction motion, even if he did not have a previous opportunity to raise his ineffective assistance of postconviction counsel claims).