

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES DURHAM,	§
	§ No. 207, 2022
Defendant Below,	§
Appellant,	§
	§ Court Below–Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§
	§ Cr. ID No. 0601013404 (K)
Appellee.	§

Submitted: August 23, 2022
Decided: November 1, 2022

Before **SEITZ**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices.

ORDER

(1) After consideration of the appellant’s opening brief, the State’s motion to affirm, and the record on appeal, we affirm the Superior Court’s denial of the appellant’s first motion for postconviction relief. On March 28, 2006, the appellant, James Durham, pleaded guilty to one count of maintaining a vehicle for keeping controlled substances (“maintaining a vehicle”), and the Superior Court immediately sentenced Durham to three years of incarceration, suspended for eighteen months of probation. Durham did not appeal his conviction or sentence; therefore, his sentence became final thirty days thereafter on April 27, 2006.¹

¹ Del. Super. Ct. Crim. R. 61(m)(1).

(2) On May 10, 2022, more than 15 years after his conviction became final and long after he finished serving his sentence in this case, Durham filed his first motion for postconviction relief under Superior Court Criminal Rule 61. The Superior Court denied the motion as untimely filed. Because Durham had already completed his sentence for maintaining a vehicle and is currently serving a sentence for other convictions—albeit a sentence that was enhanced, in part, on the basis of Durham’s maintaining-a-vehicle conviction—the Superior Court also found that Durham did not have standing to file the motion.

(3) On appeal, Durham argues that the Superior Court abused its discretion by denying his motion for lack of standing. As he did below, Durham also argues that (i) he has new evidence of his actual innocence and (ii) the Court should consider his ineffective assistance of counsel claims under the “miscarriage of justice” exception to Rule 61.

(4) We need not address Durham’s argument that he had standing to file the Rule 61 motion because we affirm the Superior Court’s ruling that Durham’s motion was procedurally barred as untimely filed. Moreover, Durham’s co-defendant’s unsworn vague statements and opinions² do not constitute new evidence

² On appeal, Durham does not cite any specific new evidence of his actual innocence. Below, however, Durham alleged that his co-defendant “took ownership” of the drugs that formed the basis of Durham’s conviction for maintaining a vehicle in a letter an undated letter addressed to “Maine” from “Xavier” (presumably Xavier Ramos, Durham’s co-defendant). But Ramos’s alleged confession does not absolve Durham of anything. App. to Opening Br., Ex. A (“I know you ain’t mad at me about the one time the police pulled us over and searched the wheels.... They

that Durham is actually innocent of the charge to which Durham, as indicated by his representations on the Truth-in-Sentencing Guilty Plea Form, freely and voluntarily pleaded guilty.³ As a final matter, contrary to Durham’s argument on appeal, there is no longer a “miscarriage of justice” exception to the procedural bars of Rule 61.

NOW, THEREFORE, IT IS ORDERED that the State’s motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice

charged us with a particle that was in the cup holder because they was mad that they didn’t find anything else on us or in the car. How they gonna charge me with a particle that wasn’t even enough for analysis like the police report said. You know I took that charge. I pleaded out to the possession and had to do [the C]onnections [Program] for it. So I hope you can forgive me for putting you through that but I took my charge. I never wanted for you to go through that. You know we take whatever is ours. And that I did. Did you get anything out of it because you shouldn’t got anything. They shouldn’t even have charged you because I was the one driving.”)

³ See *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997) (holding that, in the absence of clear and convincing evidence to the contrary, a defendant is bound by his answers on the Truth-in-Sentencing Guilty Plea Form and by his sworn testimony prior to the Superior Court’s acceptance of the guilty plea).