



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARNELL MARTIN,)	
)	
Defendant Below,)	
Appellant,)	
)	No. 112, 2021
v.)	
)	
STATE OF DELAWARE,)	
)	
Plaintiff Below,)	
Appellee.)	

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
DELAWARE IN AND FOR NEW CASTLE COUNTY

APPELLANT’S CORRECTED SUPPLEMENTAL OPENING BRIEF

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NATURE OF THE PROCEEDINGS

Appellant incorporates by reference the section of his initial Opening Brief entitled “Nature of the Proceedings” in its entirety.¹

Mr. Martin filed an Opening Brief challenging the denial of his Amended Motion for Postconviction Relief in this Court on June 4, 2021. The State filed an Answering Brief on July 7, 2021. Appellant thereafter filed a Reply Brief on July 26, 2021.

On October 28, 2021, this Court issued an Order remanding the matter back to allow the Superior Court to address two issues upon which it had not received briefing: (1) whether a person convicted of a felony for the first time faces collateral consequences under this Court’s holding in *Gural v. State*;² and (2) whether a person who has received a pardon must be treated the same as a first-time felon for purposes of analyzing the collateral consequences rule in connection with resolving a motion for postconviction relief.³

Upon remand, the Superior Court convened a status conference on November 12, 2021, at which the trial court requested briefing from both parties.⁴

¹ See Op. Br. at 1-5.

² 251 A.2d 344 (Del. 1969).

³ A476.

⁴ A011C; A479-83.

Mr. Martin filed his Opening Supplemental Memorandum on December 13, 2021.⁵ The State filed its Response on January 25, 2022.⁶ Appellant had the last word, filing his Reply on February 9, 2022.⁷ Following the conclusion of briefing, the Superior Court requested oral argument, which occurred on May 24, 2022.⁸

The Superior Court issued its decision on November 28, 2022.⁹ The trial court determined that *Gural* was no longer good law and that “the Court shouldn’t apply the collateral consequences doctrine under present-day Rule 61 at all.”¹⁰ In response to the first question raised by this Court, the trial court answered that “a person convicted of a felony for the first time may claim to face collateral consequences under *Gural v. State*, but such a claim is not cognizable under Rule 61 because of the Rule’s now-clearly-defined scope and procedural bars.”¹¹ The Superior Court additionally opined that if this Court were to determine the

⁵ A011C; A486.

⁶ A011D; A499.

⁷ A011D; A514.

⁸ A011D; A529.

⁹ *State v. Martin*, 2022 WL 17244558 (Del. Super. Ct. Nov. 28, 2022); A011E; A553.

¹⁰ *Id.* at *4.

¹¹ *Id.* at *6.

collateral-consequences rule *did* apply to Rule 61, that a person who satisfies his sentence during the pendency of the postconviction process must meet the heavy requirements of Rule 61(d)(2): (1) establish actual innocence utilizing newly-discovered evidence; or (2) demonstrate that a new rule of constitutional law, that was made retroactive to cases on collateral review either by this Court or the United States Supreme Court, applies to the movant's case, which serves to render the conviction invalid.¹²

Finally, the trial court answered this Court's second questions as follows: when balancing the finality, resource, and fairness factors that contour any collateral consequences rule, a pardoned felon need not necessarily be treated the same as on challenging his first conviction.¹³

On December 20, 2022, this Court requested that the parties file supplemental briefs addressing the Superior Court's November 28, 2022 Order, as well as various other cases and questions posed by this Honorable Court. This is Mr. Martin's Supplemental Opening Brief.

¹² *Id.* at *6-7 (discussing *Super. Ct. Crim. R.* 61(d)(2)). Rule 61(d)(2) applies to petitioners filing a successive motion for postconviction relief. *See Super. Ct. R.* 61(d)(2).

¹³ *Id.* at *8.

SUMMARY OF ARGUMENT

The Superior Court erred in determining that the collateral consequences rule established by this Court in *Gural v. State* no longer serves to protect a postconviction petitioner from dismissal of her postconviction motion due to the satisfaction of her sentence during the pendency of such litigation.

STATEMENT OF FACTS

Appellant incorporates by reference the entirety of the “Statement of Facts” section found in his initial Opening Brief.¹⁴

¹⁴ *See* Op. Br. at 7-10.

ARGUMENT

THE SUPERIOR COURT ERRED IN HOLDING THAT THE IN-CUSTODY REQUIREMENT OF RULE 61 IS WITHOUT EXCEPTION, EVEN WHERE A DEFENDANT SUFFERS COLLATERAL CONSEQUENCES DUE TO THE CHALLENGED UNCONSTITUTIONAL CONVICTION.

A. Question Presented

Whether the trial court erred in holding that the collateral consequences doctrine, established by this Court in *Gural v. State*, is no longer applicable when assessing postconviction claims. This issue was preserved via the filing of a Motion for Postconviction Relief.¹⁵

B. Standard and Scope of Review

This Court reviews the Superior Court's decision on a motion for postconviction relief for abuse of discretion.¹⁶ A *de novo* standard is applied to legal and constitutional questions.¹⁷

¹⁵ A011; A380-423.

¹⁶ *Ploof v. State*, 75 A.3d 840, 851 (Del. 2013).

¹⁷ *Id.*

C. Merits of Argument

The Collateral Consequences Doctrine Serves to Overcome Mootness, Not Standing.

Superior Court Criminal Rule 61(a)(1) sets forth who is eligible to pursue postconviction relief: “a person in custody under a sentence” of the trial court who seeks to set aside his judgment of conviction on any ground that is factually and legally adequate to form the basis of a collateral attack upon that conviction.¹⁸ This Court has held that a person loses standing to seek postconviction relief when he is “not in custody or subject to future custody for the underlying offense or challenged sentence.”¹⁹ So long as a defendant is at least serving a probationary sentence for the conviction he seeks to collaterally attack, then he is “in custody” as required by Rule 61.²⁰ Once a defendant is discharged from probation, however, he generally “no longer [has] standing to pursue postconviction relief under Rule 61, as he [is] no longer in custody or subject to future custody.”²¹

The custodial status is dispositive as to whether a defendant can seek postconviction relief in all but one scenario: the completion of a sentence renders a

¹⁸ *Super. Ct. Crim. R.* 61(a)(1).

¹⁹ *Ruiz v. State*, 2008 WL 1961187 at *2 (Del. Supr. May 7, 2008).

²⁰ *See, e.g., Epperson v. State*, 2003 WL 21692751 at *1 (Del. Supr. Jul. 18, 2003).

²¹ *Crisco v. State*, 2015 WL 257867 at *1 (Del. Supr. Jan. 20, 2015).

case moot *unless*, as a consequence of the conviction or resulting sentence, “the defendant suffers legal disabilities or burdens, in which event the defendant is considered to have a sufficient stake in the conviction or sentence to survive the satisfaction of the sentence and to permit him to obtain a review or institute a challenge.”²² To fall within the ambit of the exception, this Court has held that a defendant must first specifically demonstrate “a right lost or disability or burden imposed, by reason of the instant conviction.”²³

In *Gural v. State*, this Court ruled that the defendant had failed to make such a showing.²⁴ Gural was convicted of embezzlement and sentenced to three years of incarceration.²⁵ While incarcerated, Gural sought postconviction relief, which was ultimately denied in the trial court.²⁶ The defendant sought review of that decision, filing his appeal on February 5, 1968.²⁷ Gural completed his sentence on June 22, 1968 while the appeal was still pending.²⁸ The State filed a motion to

²² *Gural v. State*, 251 A.2d 344, 344-45 (Del. 1969).

²³ *Id.* at 345.

²⁴ *Id.*

²⁵ *Id.* at 344.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

dismiss the appeal on the grounds that the defendant had lost standing to seek postconviction relief, which was heard by this Court six months after Gural had satisfied the sentence imposed as a result of the challenged conviction.²⁹

Gural opposed the motion to dismiss, arguing that, because of the challenged conviction, “he cannot engage in certain business activities, he is deprived of certain civil rights, and he is subjected to additional penalties for subsequent criminal violations and to ‘other collateral consequences stemming from his conviction.’”³⁰ The *Gural* Court rejected such argument, however, in light of his “extensive prior criminal record.”³¹ The Court observed that the defendant had been convicted seven times previously of crimes similar to embezzlement and had previously served several terms of incarceration.³² The rights Gural claimed to have lost and the collateral consequences he purported to suffer as a result of the challenged conviction had “already been lost or imposed by reason of his earlier convictions.”³³ Accordingly, the Court determined that Gural had not suffered

²⁹ *Id.*

³⁰ *Id.* at 345.

³¹ *Id.*

³² *Id.*

³³ *Id.*

collateral legal disabilities or burdens as a result of the conviction in question sufficient to provide the defendant a sufficient stake in the conviction to survive the satisfaction of his sentence which would permit him to obtain postconviction review, and Gural's appeal was consequently dismissed.³⁴

This Court decided *Gural* in 1969. At the time of that decision, Superior Court Criminal Rule 35 governed the process related to an inmate seeking postconviction relief.³⁵ Rule 35(a), as it was written then, stated:

The court may correct an illegal sentence at any time. A prisoner in custody under sentence and claiming a right to be released on the ground that such sentence was imposed in violation of the Constitution and laws of this State or the United States, or that the court imposing such sentence was without jurisdiction to do so, or that such sentence was in excess of the maximum sentence authorized by law or is otherwise subject to collateral attack, may file a motion at any time in the court which imposed such sentence to vacate, set aside, or correct the same. Unless the motion and the files and records of the case show to the satisfaction of the court that the prisoner is not entitled to relief, the court shall cause notice thereof to be served on the Attorney General, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction or that the sentence imposed was illegal or otherwise subject to collateral attack, or that there was such a denial or infringement of the constitutional rights of the prisoner as to render the judgment subject to collateral attack, the court shall vacate and set aside the judgment and shall

³⁴ *Id.*

³⁵ See *Jones v. Anderson*, 183 A.2d 177, 179 (Del. 1962) (noting that Rule 35 of the Rules of Criminal Procedure, promulgated in 1953, provided convicted defendants with an adequate postconviction remedy).

discharge the prisoner or re-sentence him or grant a new trial or correct the sentence as may appear appropriate.³⁶

Like the modern-day Rule 61, Rule 35(a) as it existed at the time of *Gural* contained within it a requirement that only an individual be “in custody under sentence” to petition for postconviction relief.³⁷

The Supreme Court of the United States has noted that the standing requirement of federal *habeas corpus* relief merely demands that an individual be in custody at the time he files his initial petition.³⁸ The larger question, per the Supreme Court, is whether a petitioner’s release from custody causes the petition to become moot because “it no longer present[s] a case or controversy under Article II, § 2, of the Constitution.”³⁹ In order to satisfy the case-or-controversy

³⁶ *State v. Curran*, 116 A.2d 782, 782 (Del. 1955) (quoting *Super. Ct. Crim. R. 35(a)*).

³⁷ Compare *id.* with *Super. Ct. Crim. R. 61(a)(1)* (“This rule governs the procedure on an application by a person in custody under a sentence of this court seeking to set aside the judgment of conviction . . . on the ground that the court lacked jurisdiction or on any other ground that is a sufficient factual and legal basis for a collateral attack upon a criminal conviction.”).

³⁸ *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). See also, e.g., *Kumarasamy v. Attorney General of U.S.*, 453 F.3d 169, 172 (3d Cir. 2006) (holding that an individual on parole or released on his own recognizance at the time he filed his *habeas* petition met the “in custody” requirement); *Lewis v. Del. St. Hosp.*, 490 F.Supp. 177, 179 (D. Del. 1980) (“Since Lewis was in custody at the time he filed his [*habeas*] petition here, jurisdiction properly attached and was not destroyed by his subsequent escape.”).

³⁹ *Id.*

requirement, a party must have a “personal stake in the outcome” of the pending matter.⁴⁰

Like the *Gural* Court, the Supreme Court of the United States has held that once an inmate has satisfied their sentence, “some concrete and continuing injury other than the now-ended incarceration or parole—some ‘collateral consequence’ of the conviction—must exist if the suit is to be maintained.”⁴¹ The Court examined the history of its *habeas* precedent as to the collateral consequence issue in *Spencer v. Kemna*.⁴²

The *Spencer* Court observed that in its initial *habeas corpus* cases, it “required collateral consequences of conviction to be specifically identified.”⁴³ To satisfy that standard, a petitioner needed to demonstrate “concrete disadvantages or disabilities that had in fact occurred . . . or were imposed as a matter of law (such as deprivation of the right . . . to hold office, to serve on a jury, or to engage in certain businesses.”⁴⁴ The *Spencer* Court pointed to its decision in *Carafas v.*

⁴⁰ *Id.* (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-78 (1975)).

⁴¹ *Spencer*, 523 U.S. at 7.

⁴² *Id.* at 8-10.

⁴³ *Id.*

⁴⁴ *Id.*

LaVallee as an example of where a defendant satisfied this “fastidious approach to collateral consequences.”⁴⁵ In *Carafas*, the Court ruled the petitioner’s *habeas* matter was not moot, despite having concluded his sentence, because as a “consequence of his conviction, he cannot engage in certain businesses; he cannot serve as an official of a labor union for a specified period of time; he cannot vote in any election held in New York State; he cannot serve as a juror.”⁴⁶

The Court eventually began to abandon the requirement that showings of loss of civil rights and liberties be concrete, however, ruling in *Pollard v. United States* that the “possibility of consequences collateral to the imposition of sentence [was] sufficiently substantial to justify our dealing with the merits.”⁴⁷ “Thereafter, and in summary fashion, [the Supreme Court] proceeded to accept the most generalized and hypothetical of consequences as sufficient to avoid mootness in challenges to conviction.”⁴⁸ Ultimately, because the *Spencer* defendant was challenging the legality of a revocation of parole, and not his original convictions,⁴⁹ the Court declined to presume that he suffered collateral

⁴⁵ *Id.* at 8-9.

⁴⁶ *Id.* at 9 (quoting *Carafas v. LaVallee*, 391 U.S. 234, 237 (1968)).

⁴⁷ *Id.* (discussing *Pollard v. United States*, 352 U.S. 354 (1957)).

⁴⁸ *Id.* at 10 (citing *Evitts v. Lucey*, 469 U.S. 387 (1985)).

⁴⁹ *Id.* at 8.

consequences.⁵⁰ The Court also ruled that the injuries alleged by the defendant as a result of his parole termination—that the revocation could be used against him in future parole proceedings; to increase his sentence in future sentence proceedings; to impeach him should he appear as a witness or litigant in a future criminal or civil proceeding; or could be used against him directly under the Federal Rules of Evidence—were speculative and insufficient to overcome the mootness issue.⁵¹

The analysis established by *Gural* not only aligns with the federal rule as recognized in *Spencer*, but tracks myriad other jurisdictions’ assessment of whether a postconviction petition can survive the satisfaction of a sentence.⁵²

⁵⁰ *Id.* at 14.

⁵¹ *Id.* at 14-15.

⁵² See, e.g., *Kranz v. State*, 187 A.3d 66, 75-76 (Md. 2018) (a postconviction claim is not moot despite satisfaction of sentence if the defendant continues to suffer consequences as a result of the challenged conviction); *Martinez-Hernandez v. State*, 380 P.3d 861, 865 (Nev. 2016) (“A postconviction petition for a writ of habeas corpus challenging the validity of a judgment of conviction filed while the petitioner is imprisoned or under supervision as a probationer or parolee does not become moot when the petitioner is released if there are continuing collateral consequences stemming from that conviction. Furthermore, a criminal conviction creates a presumption that continuing collateral consequences exist.”); *In re Chandler*, 67 A.3d 261 (Vt. 2013) (holding that completion of a sentence does not render a postconviction petition moot if the defendant suffers collateral consequences of the conviction under attack); *Price v. State*, 1 A.3d 426, 428 (Me. 2010) (recognizing that a postconviction petition overcomes a mootness challenge “when sufficient collateral consequences will result from a resolution of the issue at bar to justify relief . . . ”); *Sebastian v. Mahoney*, 25 P.3d 163, 164-65 (Mont. 2001) (holding that whether a habeas petition is moot depends on whether a court can grant effective relief); *Ex parte Oliver*, 703 S.W.2d 205, 206 (Tex. Crim. App.

In concluding that *Gural's* collateral consequence doctrine was inapplicable to today's version of Rule 61, the Superior Court assessed prior decisions' discussion of the in-custody requirement but failed to consider the procedural posture of each case.⁵³ Stated differently, the trial court did not distinguish between cases where an individual was in custody at the time she petitioned under Rule 61 and matters where a defendant's sentence was long-satisfied before trying to secure postconviction relief.

The trial court cited this Court's decision in *Lewis v. State* for the proposition that once a defendant satisfies his sentence, "postconviction relief 'cannot be secured under Rule 61, because the language of [Rule] 61(a) appears to create a standing bar. If the collateral consequences rule for mootness is to have any applicability at all, it must be available under Rule 35 as opposed to Rule 61.'"⁵⁴ While this Court did come to such conclusion in *Lewis*, the specific procedural posture of the *Lewis* case was paramount to its holding.

1986) (holding a petitioner's claim is not moot after service of his sentence because he remained "subject to the possibility of constraints on his liberty due to the existence of a prior felony conviction on his record.").

⁵³ See generally, *Martin*, 2022 WL 17244558 at *2-6.

⁵⁴ *Id.* at *4 (quoting *Lewis v. State*, 797 A.2d 1198, 1201 (Del. 2002)).

In 1991, Lewis pled guilty to Assault in the Second Degree and was sentenced to eight years of Level V incarceration, suspended immediately for one year of Level IV supervision, followed by six months of Level III probation.⁵⁵ In 1992, the defendant violated his probation and was sentenced to thirty-one days of incarceration, plus another year of probation.⁵⁶ In 2000, INS initiated proceedings to deport Lewis—a citizen of Jamaica—based in part on his 1991 felony conviction.⁵⁷ Despite that Lewis had already completed his 1991 sentence prior to 2000, the defendant filed a motion to modify that sentence pursuant to Superior Court Criminal Rule 35(b).⁵⁸ Specifically, Lewis requested that the trial court modify his original sentence of eight years of incarceration to eleven months at Level V supervision, thus removing the conviction from the class of offenses that made Lewis deportable.⁵⁹ The Superior Court granted Lewis’s motion, reasoning that the hardship on the defendant’s family constituted “extraordinary circumstances” within the meaning of Rule 35(b), and that the collateral

⁵⁵ *Lewis*, 797 A.2d at 1199.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

consequences exception established in *Gural* provided a basis for relief under the rule as well.

The State appealed, contending in relevant part that Rule 35(b) did not allow the trial court to modify a legal sentence that had been fully served and discharged.⁶⁰ The Department of Justice also argued that Rule 61 “is the only operative rule for postconviction relief, precluding the need for a time limit in Rule 35.”⁶¹ The *Lewis* Court rejected this argument, however, reasoning that it did not take into account the differences in “language and function of Rule 35(b) and Rule 61.”⁶² Although this Court had previously held that “the purpose of Rule 35 is to afford a remedy in lieu of *habeas corpus* and *coram nobis*, to the defendant who claims that his conviction was obtained or his sentence imposed in violation of his constitutional guarantees,”⁶³ such ruling preceded the revision of the Criminal Rules in 1987.⁶⁴ Those revisions replaced the former Rule 35 with Rule 61 and the amended, current form of Rule 35.⁶⁵ The Court observed that “Rule 61 addresses

⁶⁰ *Id.* at 1200.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* (quoting *Johnson v. State*, 280 A.2d 712, 713 (Del. 1971)).

⁶⁴ *Id.* at 1200.

⁶⁵ *Id.*

postconviction relief, which requires a legal challenge to the conviction, whereas Rule 35(b) allows a reduction of sentence, without regard to the legality of the conviction.”⁶⁶

The Court looked back to its decision in *Gural*, reasoning that the exceptions to the time requirement as found in Rule 61(i)(5) were narrower than the equitable considerations contemplated in its 1969 decision.⁶⁷ The *Lewis* Court clarified that *Gural* did not require the existence of a constitutional or legal defect in order to allow a petitioner to seek relief after the completion of his sentence, but rather held that collateral consequences could be grounds to permit relief after the satisfaction of judgment.⁶⁸

The Court also compared the two Rules, noting that while Rule 35(b) allowed for a reduction of sentence regardless of whether the sentence was legally deficient within ninety days of imposition or later so long as “extraordinary circumstances” existed, Rule 61 strictly required a postconviction motion to be filed, at that time, within three years of conviction.⁶⁹ The only instances in which

⁶⁶ *Id.*

⁶⁷ *Id.* at 1201.

⁶⁸ *Id.* (citing *Gural*, 251 A.2d at 344).

⁶⁹ *Id.* at 1201.

the three-year limit was not applicable were “when there is a claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the conviction.”⁷⁰ Reasoning that the collateral consequences imagined by *Gural* exceeded what is considered under Rule 61(i) for the purposes of waiving a time limitation, the “open language of Rule 35(b), however, can be plainly read as permitting such considerations.”⁷¹

Lewis stands for the proposition that while exceptions to the time bar of Rule 61 fail to encompass consideration of the wide range of collateral consequences contemplated by *Gural*, no such restrictions exist as to the “extraordinary circumstances” exception in Rule 35(b). Moreover, the *Lewis* Court narrows its holding regarding the inapplicability of *Gural* to Rule 61 specifically to the procedural bar of Rule 61(i)(1)—prohibiting the *filing* of a postconviction motion after three years—not to the “in custody” requirement of Rule 61(a)(1).

Stated differently, *Lewis* was not entitled to relief under Rule 61 because the collateral-consequences doctrine of *Gural* serves to allow a petitioner to overcome mootness when, during the pendency of postconviction litigation, she satisfies her

⁷⁰ *Id.* (internal quotations omitted).

⁷¹ *Id.*

sentence ; it *cannot* sidestep the standing requirement of Rule 61(a) that a petitioner be in custody when she initially files a postconviction motion, however. In contrast, Rule 35(b) contains no such standing requirement—a sentence can be modified at any point beyond the initial ninety-day window so long as a petitioner establishes the existence of extraordinary circumstances, regardless of how long it has been since imposition of sentence.⁷²

The Superior Court also relied upon *Guinn v. State*⁷³ in determining that the collateral-consequence doctrine is inapplicable to Rule 61.⁷⁴ Just as with *Lewis*, however, the Superior Court ignored the case’s procedural posture, which served as the reasoning for the *Guinn* Court’s decision.

Guinn was convicted of assault in a detention facility and subsequently sought postconviction relief pursuant to Rule 61.⁷⁵ The motion was denied by the trial court and this Court affirmed.⁷⁶ Guinn subsequently filed a second motion, which was denied as previously adjudicated.⁷⁷ On January 27, 1988, Guinn

⁷² *Lewis*, 797 A.2d at 1201.

⁷³ 1993 WL 144874 (Del. Supr. Apr. 21, 1997).

⁷⁴ *Martin*, 2022 WL 17244558 at *4.

⁷⁵ *Guinn*, 1993 WL 144874 at *1.

⁷⁶ *Id.*

⁷⁷ *Id.*

satisfied his sentence and was thus no longer in custody in conjunction with the assault in a detention facility conviction.⁷⁸ Nevertheless, Guinn filed another postconviction motion nearly five years later on November 6, 1992.⁷⁹ This Court affirmed the denial of Guinn’s third motion, explaining that Guinn was no longer in custody for the challenged sentence and thus lacked standing.⁸⁰

The Superior Court next cited its prior holding in *State v. Hinson*⁸¹ to support its proposition that the collateral-consequences doctrine is inapplicable to Rule 61.⁸² But, as in *Lewis* and *Guinn*, Hinson lacked standing to commence a postconviction action due the satisfaction of his sentence years prior to filing.⁸³

Hinson pled guilty to aggravated menacing on August 31, 1998.⁸⁴ She was sentenced to two years of Level V incarceration, which was suspended

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ 2006 WL 337031 (Del. Super. Ct. Feb. 10, 2006).

⁸² *Martin*, 2022 WL 17244558 at *4.

⁸³ *See Hinson*, 2006 WL 337031 at *1.

⁸⁴ *Id.*

immediately for descending levels of probation.⁸⁵ Hinson's probation ended three years later, on August 30, 2001, though she was not officially discharged from probation until July 2002.⁸⁶

Hinson was indicted for murder in the first degree in July 2005.⁸⁷ Due to her 1998 aggravated menacing conviction, she was eligible for the death penalty.⁸⁸ Despite that she had not been in custody under the aggravated menacing conviction for at least three years, Hinson filed a motion for postconviction relief pursuant to Rule 61 on October 28, 2005.⁸⁹ The Superior Court held that Hinson lacked standing under Rule 61(a)(1) because she was not in custody or subject to future custody under the challenged sentence.⁹⁰

The Superior Court did not discuss or cite *Gural* when deciding *Hinson*.⁹¹ Such omission is unsurprising, however, as any collateral consequences suffered

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* A prior conviction for such violent felony constituted a statutory aggravating circumstance under the then-extant death penalty statute. *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at *2.

⁹¹ *See generally id.*

by Hinson could only have been considered if the defendant had filed her postconviction motion while in custody under the challenged sentence and, during the pendency of litigation, satisfied that sentence. The exception established by *Gural*, however, could not serve to overcome Hinson’s lack of standing at the time of filing.

Other decisions from this Court after *Lewis* demonstrate that the collateral consequences doctrine only relates to mootness, not standing. In *Steck v. State*, this Court affirmed the trial court’s denial of the petitioner’s postconviction motion.⁹² Steck pled guilty to drug offenses in May 2000 and again in July 2008.⁹³ The Superior Court discharged Steck from probation in the 2008 case on July 18, 2014.⁹⁴ In December 2014—five months after having satisfied the 2008 sentence—Steck filed a motion for postconviction relief challenging said conviction.⁹⁵ The Superior Court summarily dismissed the motion and this Court affirmed.⁹⁶ In so doing, this Court held that “[a]s a general matter, relief under

⁹² 2015 WL 2357161 at *1-2 (Del. Supr. May 15, 2015)

⁹³ *Id.* at *1.

⁹⁴ *Id.* At the same violation hearing where the 2008 sentence was terminated, the trial court ordered Steck to serve one year at Level V for the 2000 conviction, with no probation to follow. *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at *1-2.

Rule 61 is only available when the movant is in custody on the conviction that is the subject of the postconviction motion. In this case, when Steck filed his motion for postconviction relief on December 3, 2014, he was no longer in custody under the sentence imposed in the 2008 case.”⁹⁷

Anderson v. State led to a similar result.⁹⁸ Anderson pled guilty to assault in the second degree in September 2001 and was sentenced to two years of Level V incarceration suspended for twenty-two months of Level III probation.⁹⁹ In January 2002, the trial court found Anderson in violation of probation and discharged him from probation as unimproved.¹⁰⁰ Eleven years later, Anderson

⁹⁷ *Id.* at *2. It does appear, however, that the *Steck* Court *sua sponte* discussed the collateral consequence doctrine under *Gural*, stating that, in order to seek postconviction relief, “Steck was required to specifically identify a right lost or disability or burden imposed as a result of the 2008 case that would overcome the general rule mooted his claims for postconviction relief.” *Id.* Appellant contends that this *dictum* is erroneous, as a case or controversy cannot become moot if the petitioner never had standing to file in the first instance. *See, e.g., Friends of the Earth, Inc. v. Laidlaw Env’t Serv. (TOC), Inc.*, 528 U.S. 167, 191 (2000) (whereas “[s]tanding doctrine functions to ensure, among other things, that the scarce resources of the federal courts are devoted to those disputes in which the parties have a concrete stake[,] . . . by the time mootness is an issue, the case has been brought and litigated, often . . . for years.”).

⁹⁸ 2014 WL 7010017 (Del. Supr. Nov. 11, 2014).

⁹⁹ *Id.* at *1.

¹⁰⁰ *Id.*

sought to challenge the 2002 conviction, filing a motion for postconviction relief in 2013.¹⁰¹ The Superior Court held that Anderson lacked standing because he was not in custody at the time he commenced his action, and this Court affirmed.¹⁰²

This Court also discussed the collateral consequences rule in *Keita v. State*, albeit in a different context.¹⁰³ Keita was found guilty of two misdemeanor offenses and sentenced to probation.¹⁰⁴ Within a few weeks of sentencing, the defendant was found in violation of probation and resentenced.¹⁰⁵ The Superior Court ordered, however, that should Keita be taken into custody by federal immigration officers, his probation would be discharged.¹⁰⁶ Shortly thereafter, Keita was taken into custody by Immigration and Customs Enforcement and was discharged from probation.¹⁰⁷

¹⁰¹ *Id.*

¹⁰² *Id.* Like in *Steck*, the *Anderson* Court, in *dictum*, notes that Anderson failed to identify any collateral consequence that would allow his postconviction motion to be considered. *Id.* at *2. Appellant respectfully contends such reasoning was erroneous. *See* n.131, *supra*.

¹⁰³ 2010 WL 4970743 at *1 (Del. Supr. Dec. 7, 2010).

¹⁰⁴ *Id.* at *1.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

This Court held that Keita’s appeal of his conviction was moot as he had satisfied the sentence imposed by the Superior Court upon termination of his probation.¹⁰⁸ The Court recognized that mootness can be overcome if sufficient collateral consequences exist due to the conviction in question that had not already been lost or imposed by reason of his earlier convictions.¹⁰⁹ Such was not the case for Keita, however, as he was already a felon due to a prior conviction for possession with intent to deliver.¹¹⁰ Just as the *Gural* defendant could not demonstrate any collateral consequences he had not already suffered due to a prior conviction, neither could Keita, and his appeal was dismissed as moot.¹¹¹

The Superior Court’s reliance on cases such as *Lewis*, *Guinn*, and *Hinson* was misplaced. Unlike those defendants, Mr. Martin *was* in custody at the time he commenced his postconviction action. *Lewis*, *Guinn*, and *Hinson*—as well as *Steck* and *Anderson*—all lacked standing to seek relief under Rule 61; Appellant did not. Such distinction is not without difference—those cases deal with standing, while the instant case deals with mootness. The trial court failed to take such

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* (internal citations omitted).

¹¹⁰ *Id.* at *2. The Court also noted that “collateral consequences generally do not arise from misdemeanor convictions.” *Id.* at *1.

¹¹¹ *Id.* at *2.

difference into account when reaching its conclusion and, as a result, this Court should reject the Superior Court’s determination that the collateral consequence doctrine should not be applied in postconviction matters going forward.

A first-time felon and a convicted, but pardoned, felony suffer the same collateral consequences and loss of liberties when convicted of a felony.

After this Court remanded the instant matter to the trial court, the Department of Justice conceded that “[f]or purposes of reviewing [Mr.] Martin’s postconviction motion for mootness, [Mr.] Martin is in the same position as someone convicted of a felony for the first time.”¹¹² Although the parties were in agreement as to this issue, the Superior Court held otherwise, determining that “a pardoned felon need not necessarily be treated the same as one challenging his first conviction.”¹¹³ The Court’s reasoning fails to take into account the rights lost by Mr. Martin as a result of a new felony conviction, focusing instead on the Governor’s ability to issue conditional pardons, as well as the public memory of a pardoned offense.¹¹⁴

Neither rationale is relevant to the instant determination, however. There is no evidence in the record that the Governor issued anything other than an

¹¹² A509.

¹¹³ *Martin*, 2022 WL 17244558 at *8.

¹¹⁴ *Id.*

unconditional pardon to Mr. Martin. Moreover, the public memory of Mr. Martin’s prior criminal conduct has no bearing on the restoration of his civil liberties subsequent to his pardon. Regardless of whether the community at large recalls Appellant’s previous conduct, he could—prior to the instant conviction—enjoy the civil rights afforded to non-felons. In his attempt to obtain postconviction relief, Appellant was not seeking to “obliterate the public memory of the offense,” but to overturn an illegal conviction that resulted in the loss of his civil liberties.¹¹⁵

A first-time felon and a previously pardoned felon lose the same civil rights upon conviction of a felony offense. There is no basis in the law to distinguish between the two, and Appellant is unaware of any authority—state or federal—that holds otherwise.

Adopting the Superior Court’s Order Will Serve to Undermine the Fairness of the Criminal Justice System as it Arbitrarily Imposes Higher Burdens on Defendants Convicted of Minor Felony Offenses.

The postconviction process is often lengthy and labyrinthine.¹¹⁶ Moreover, such process often cannot commence until approximately one year after

¹¹⁵ *Id.* (quoting *State v. Skinner*, 632 A.2d 82, 85 (Del. 1993)).

¹¹⁶ *See, e.g., State v. Reyes*, 155 A.3d 331, 336 (Del. 2017) (timely motion for postconviction relief filed in 2004 was not decided until 2016); *State v. Washington*, 2016 WL 6248463 at *1 (Del. Super. Ct. Oct. 21, 2016) (“On March 7, 2012, Washington initiated postconviction proceedings with the filing of his Motion for Postconviction Relief. The Motion was referred to a commissioner

conviction, given the length of the direct appeal phase of a case. While the length of postconviction proceedings does not prejudice an individual serving a lengthy Level V sentence, defendants convicted of lesser felony offenses—such as Appellant—face the risk of satisfying their sentence before any postconviction claims can be fully adjudicated. A defendant who timely files a postconviction motion has little to no control over the subsequent timeline of the litigation. Extensions to briefing schedules are liberally granted, and multiple factors beyond the control of the defendant can serve to extend the proceeding. Ruling that a defendant who satisfies her sentence during the lengthy litigation process of a postconviction motion can no longer challenge an unconstitutional conviction is fundamentally unfair and serves to lessen the respectability of the criminal justice process.

The unfairness of such a ruling was recognized by the Supreme Court of the United States as far back as 1968 in *Carafas v. LaVallee*.¹¹⁷ In *Carafas*, the

of this Court. The postconviction process was lengthy and a bit convoluted. It included the retirement of the originally assigned commissioner, the assignment of a new commissioner, and, at different times, various counsel being appointed to represent Washington, not all of whom met with his approval. Eventually, this Court denied Washington's Amended Motion for Postconviction Relief and Supplemental Claims upon Washington's appeal from the Findings of Fact and Recommendations of the Commissioner. In the midst of that postconviction process this Motion was filed. However, for reasons unknown to the Court, the Motion was never resolved. By this Order, the Court decides that Motion.”).

¹¹⁷ 391 U.S. 234 (1968).

defendant filed an application for *habeas corpus* while in custody in 1963.¹¹⁸ Over the next four years, Carafas’s petition was considered in various courts.¹¹⁹ Carafas was released from custody in 1967, two weeks before he filed a petition for *certiorari* with the High Court.¹²⁰ Despite that Carafas had satisfied his sentence, the Supreme Court determined that he was “entitled to consideration of his application for relief on its merits.”¹²¹ The Court observed:

[Carafas] is suffering, and will continue to suffer, serious disabilities because of the law’s complexities and not because of his fault, if his claim that he has been illegally convicted is meritorious. There is no need in the statute, the Constitution, or sound jurisprudence for denying to petitioner his ultimate day in court.

[. . .]

The petitioner in this case was sentenced in 1960. He has been attempting to litigate his constitutional claim ever since. His path has been long—partly because of the inevitable delays in our court processes and partly because of the requirement that he exhaust state remedies. He should not be thwarted now and required to bear the consequences of assertedly unlawful conviction simply because the path has been so long that he has served his sentence.¹²²

¹¹⁸ *Id.* at 239.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 239-40.

While not as lengthy as the litigation in *Carafas*, the proceedings in the instant case outlived Appellant’s sentence, through no fault of his own. Examination of the timeline of Mr. Martin’s case demonstrates the unfairness of depriving him of his day in court.

Mr. Martin was convicted and sentenced on January 9, 2018.¹²³ He filed a timely Notice of Appeal in this Court to initiate a direct appeal.¹²⁴ On November 1, 2018, this Court issued its Mandate affirming Mr. Martin’s conviction.¹²⁵

Appellant filed his *pro se* Motion for Postconviction Relief and Motion for Appointment of Counsel within forty-five days of the issuance of the Mandate, on December 6, 2018.¹²⁶ The trial court granted Appellant’s request for counsel on January 2, 2019, and ordered that the Office of Conflicts Counsel appoint an attorney to represent Mr. Martin that same day.¹²⁷ Approximately three months later, the Office of Conflicts Counsel appointed postconviction counsel to represent Appellant.¹²⁸

¹²³ A005.

¹²⁴ A005.

¹²⁵ A006.

¹²⁶ A006.

¹²⁷ A006.

¹²⁸ A007.

The trial court issued a Scheduling Order, mandating that an Amended Motion be filed by postconviction counsel on or before July 12, 2019.¹²⁹ On July 10, 2019, the defense requested and the Superior Court granted extension of that deadline to October 12, 2019.¹³⁰ Two more extensions were granted, making the Amended Motion ultimately due on December 2, 2019.¹³¹ The Amended Motion was filed on that date.¹³²

Trial Counsel filed an Affidavit in response to the Amended Motion on January 22, 2020.¹³³ The State filed its Response to the motion on April 24, 2020.¹³⁴ The defense requested two extension to file a Reply Brief, as postconviction counsel was awaiting records from the Department of Health and Social Services relevant to Mr. Martin's claim of ineffective assistance of counsel, ultimately filing the Reply on August 13, 2020.¹³⁵

¹²⁹ A007.

¹³⁰ A007.

¹³¹ A011.

¹³² A011.

¹³³ A011A.

¹³⁴ A011A.

¹³⁵ *See* A011A.

Nearly four months later, on November 30, 2020,¹³⁶ the Superior Court requested that the parties provide supplemental briefing as to the applicability of this Court’s decision in *Green v. State* on whether Mr. Martin’s claim was procedurally barred.¹³⁷ Cross-memoranda response to that issue were filed by both parties on December 31, 2020.¹³⁸

As of the filing of those pleadings, just under three years—1,087 days, specifically—had elapsed since Mr. Martin’s conviction. From the issuance of this Court’s mandate—thereby starting the period in which Mr. Martin was eligible to seek postconviction relief—to December 31, 2020, twenty-six months—791 days—had passed.¹³⁹ From the date Mr. Martin filed his initial *pro se* motion for postconviction relief, approximately twenty-five months—or 756 days—had elapsed. On February 24, 2021—fifty-five days after briefing had concluded—the Superior Court discharged Mr. Martin from probation, and issued its Order dismissing Appellant’s Amended Motion on March 17, 2021.¹⁴⁰ None of the delay enumerated *supra* was attributable to Appellant. As was the case in *Carafas*, there

¹³⁶ A011B.

¹³⁷ 238 A.3d 160 (Del. 2020). This Court issued its decision in *Green* on August 17, 2020.

¹³⁸ A011B.

¹⁴⁰ A011B.

exists no reason to deny Mr. Martin his day in court because of factors beyond his control.

The trial court recommended that, even if this Court holds that a collateral consequence analysis is appropriate when a petitioner satisfies her sentence during the pendency of the postconviction process, it should no longer employ the *Gural* test.¹⁴¹ Instead, the Superior Court reasons that such a defendant should be required to demonstrate “(i) specificity; and (ii) a showing of a strong inference of actual innocence or that the Court lacked jurisdiction to convict and sentence in the matter.”¹⁴² Such recommendation is wholly unreasonable, as it dramatically increases the burden put upon a defendant that would never exist for any other defendant who timely-filed a first postconviction motion.¹⁴³ The Superior Court comes to such determination *sua sponte*, as such an outcome was not requested by the State. Moreover, the trial court cites to no other jurisdiction in which such an exacting standard is employed in a similar scenario.

The notion of fundamental fairness requires this Court to continue applying the rule established by *Gural*. The longevity of a postconviction motion is rarely affected by a criminal defendant and a petitioner’s ability to challenge an illegal

¹⁴¹ *Martin*, 2022 WL 17244558 at *7-8.

¹⁴² *Id.* at *8.

¹⁴³ *See generally Super. Ct. Crim. R. 61(i).*

conviction should not be affected by the whims of Court and Counsel as to the speed at which such a pleading is litigated. This Court must disregard the findings of the Superior Court and hold that Mr. Martin is entitled to pursue postconviction relief because of the collateral consequences of his conviction.

CONCLUSION

For the reasons stated herein, Mr. Martin respectfully requests that this Honorable Court reverse the judgment of the Superior Court.

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