



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 SUPPLEMENTAL REPLY BRIEF

**THE LAW OFFICE OF
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DATED: April 11, 2023

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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.

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

The State misapprehends Appellant’s argument, contending that Mr. Martin attempts to “avoid mootness by relying on standing.”¹ Appellant does no such thing. Instead, Mr. Martin merely distinguishes when the collateral consequences doctrine is applicable from when it is not: a postconviction attack upon a conviction that was properly initiated by a movant in custody can survive satisfaction of her criminal sentence so long as she suffers collateral consequences stemming from her conviction. On the other hand, no collateral consequence, regardless of its severity, can serve to overcome the “in custody” requirement of Rule 61 if a petitioner’s sentence expired prior to the filing of her initial postconviction action.

In his Supplemental Opening Brief, Appellant engaged in an in-depth analysis of this Court’s decision in *State v. Lewis* to demonstrate that its holding

¹ Supp. Ans. Br. at 19.

regarding the inapplicability of *Gural v. State*² to Rule 61 is limited to the procedural bar found in Rule 61(i)(1), *not* to the standing requirement found in Rule 61(a)(1).³ The State fails to engage with Mr. Martin’s discussion of *Lewis* in any meaningful way, however, and thus ignores the nuance of this Court’s 2002 decision.⁴ The State fails to recognize that *Lewis* merely refused to allow collateral consequences to serve as a mechanism to overcome an untimely-filed postconviction motion, and resultingly comes to the overly broad, unsupported conclusion that the collateral consequences doctrine is wholesale “inapplicable to Rule 61.”⁵

The State looks to a number of cases in an unsuccessful attempt to find a decision that shares Appellee’s broad interpretation of *Lewis*.⁶ One case discussed by Appellee is *Baltazar v. State*,⁷ about which the Department of Justice concludes is “of limited use because it did not expressly reaffirm *Lewis*.”⁸ This Court’s

² 251 A.2d 344 (Del. 1969).

³ Supp. Op. Br. at 15-20 (discussing *State v. Lewis*, 797 A.2d 1198 (Del. 2002)).

⁴ *See generally* Supp. Ans. Br. at 27-31.

⁵ Supp. Ans. Br. at 31.

⁶ Supp. Ans. Br. at 31-34.

⁷ 2015 WL 257334 (Del. Supr. Jan. 20, 2015).

⁸ Supp. Ans. Br. at 34.

decision in *Baltazar*, however, *is* of use in answering the instant question, as it engages in an analysis consistent with Mr. Martin’s explanation of the *Lewis* holding.

Baltazar was convicted of various misdemeanor offenses on August 23, 2011.⁹ The defendant—a native and citizen of Guatemala—satisfied his sentence less than one year later, on August 14, 2012.¹⁰ In April 2013, the United States Immigration and Customs Enforcement (“ICE”) initiated deportation proceedings against the defendant.¹¹ Baltazar was ordered to be deported on September 5, 2013.¹² One month later, Baltazar filed a *pro se* motion seeking postconviction relief, alleging that his attorney was ineffective in failing to advise him of the collateral immigration consequences of his conviction.¹³ The trial court subsequently appointed counsel to represent Baltazar in connection with his postconviction motion.¹⁴

⁹ *Baltazar*, 2015 WL 257334 at *1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at *2.

¹⁴ *Id.*

Subsequent to his appointment, postconviction counsel filed a Motion to Vacate Conviction of Baltazar’s behalf, alleging that the collateral consequences rule of *Gural* served as a basis to vacate the defendant’s conviction.¹⁵ “The motion argued that Baltazar’s deportation order was an ‘extraordinary circumstance’ and constituted a ‘collateral legal disability’ flowing from his convictions and that his convictions should be vacated.”¹⁶ The trial court denied that motion, ruling Baltazar had “received appropriate collateral consequence warnings.”¹⁷

Undeterred, Baltazar’s postconviction counsel filed an Amended Motion to Vacate Conviction under Superior Court Criminal Rule 35.¹⁸ The Amended Motion contained a provision that Baltazar—by and through counsel— “misunderstood the applicable standard and requested the Superior Court to consider [the defendant’s] arguments in the interest of justice.”¹⁹ The Superior Court denied both the postconviction motion and the Amended Rule 35 motion.²⁰

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

When considering Baltazar’s appeal, this Court pointed to *Lewis* for the proposition that although Rule 35 allows consideration of collateral consequences by the trial court when considering the *reduction* of a sentence imposed more than ninety days prior, such rule does not allow for the Superior Court to simply vacate a conviction regardless of the existence of collateral consequences.²¹

In addressing the dismissal of Baltazar’s postconviction motion, this Court made no reference to *Gural* or collateral consequences, however, noting simply that because the defendant had been discharged from probation prior to initiating his collateral attack, he “lack[ed] standing to pursue a claim under Superior Court Criminal Rule 61 for ineffective assistance of counsel.”²²

This Court’s analysis in *Baltazar* confirms Mr. Martin’s interpretation of standing versus mootness, the holding of *Lewis*, and the applicability of the collateral consequence doctrine to Rule 61. Although the *Baltazar* Court considered the collateral consequence doctrine when assessing the defendant’s Rule 35 motion, it did not do so when considering his postconviction claims.²³ This is unsurprising, as a defendant who has satisfied her sentence simply lacks

²¹ *Id.* at *3.

²² *Id.*

²³ *Id.*

standing to initiate a collateral attack upon her conviction, rendering any analysis of collateral consequences superfluous in such procedural posture. The *Baltazar* Court did go on, however, to rule that *even if* the defendant had had standing to file a postconviction motion, he would have been procedurally bar by the time limitation of Rule 61(i)(1).²⁴ The Court did *not* assess the time bar of Rule 61 through the lens of the collateral consequences doctrine, as *Lewis* limited the inapplicability of *Gural* to that specific procedural bar.²⁵

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

Despite that the State took the position in the trial court that Mr. Martin’s “unconditional pardon resulted in him being in the same position as someone convicted of [a] felony offense for the first time,” Appellee now pivots to align itself with the holding of the Superior Court.²⁶ The State does little more than parrot the language of the trial court’s decision, though, focusing on the “public memory” of a pardoned crime.²⁷ That a pardon does not obviate awareness of past crimes does not change that the gubernatorial act restores an individual’s civil

²⁴ *Id.*

²⁵ *See Lewis*, 797 A.2d at 1201.

²⁶ Supp. Ans. Br. at 44.

²⁷ Supp. Ans. Br. at 43-46.

rights and liberties. Prior to his conviction in the instant matter, Mr. Martin could vote, hold public office, purchase and possess a deadly weapon, and serve on a jury. None of those rights were diminished by a neighbor's memory of the details of the crime for which Appellant was pardoned. The trial court's focus on whether a pardon "erase[s] guilt" was immaterial to the issue at hand.²⁸

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 State contends that the dismissal of a timely-filed postconviction motion, after years of briefing and on the eve of a decision on the merits, simply because the defendant was discharged from probation during the pendency of the proceedings is a fundamentally fair outcome because, in part, "states are not constitutionally required to provide postconviction relief" in the first place.²⁹ In essence, the State seems to suggest that without a constitutional mandate to provide a postconviction process, whether the system a state opts to create is a fair one is irrelevant. Such argument is unavailing.

While true that there is no constitutional mandate that a state provide a mechanism for postconviction relief, once a state *does* provide such an apparatus,

²⁸ *State v. Martin*, 2022 WL 17244558 at *7 (Del. Super. Ct. Nov. 28, 2022).

²⁹ Supp. Ans. Br. at 37.

the Supreme Court of the United States has made clear that such proceedings must comport with “the fundamental fairness mandated by the Due Process Clause.”³⁰ While the Fourteenth Amendment “does not require absolute equality or precisely equal advantages,” a state-established system must “be free of unreasoned distinctions.”³¹ The trial court’s attempt to heighten the burden imposed upon postconviction petitioners convicted of minor felony offenses runs afoul of those requirements and consequently violates the Due Process Clause.

Mr. Martin has lost various civil rights as a result of the challenged conviction. He cannot hold public office, possess a firearm, or serve on a jury. He seeks to vacate a conviction he contends was constitutionally infirm due to the ineffective assistance of counsel. A decision on the merits of his postconviction claims would provide direct relief to Mr. Martin. Such decision would not merely be advisory in nature—if successful, Appellant’s conviction would be vacated and he would regain the civil rights he has lost. Such result is the exact purpose of the collateral consequences doctrine—to allow a petitioner to obtain relief despite that, through no fault of her own, she satisfied her sentence during the pendency of the postconviction proceedings. This Court must rule that *Gural* does apply to Rule 61 proceedings, and that Mr. Martin—a pardoned felon prior to his instant conviction

³⁰ *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987).

³¹ *Ross v. Moffitt*, 417 U.S. 600, 612 (1974).

who enjoyed all of the civil rights and liberties afforded to any other citizen—
suffers from ongoing collateral consequences that are capable of being redressed
by a decision on the merits of his claims.

CONCLUSION

For the reasons stated in his Opening Brief and herein, Mr. Martin respectfully requests that this Honorable Court reverse the judgment of the Superior Court.

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