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Case Number 165,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RALPH REED,	§	
	§	
Defendant Below,	§	No. 165, 2024
Appellant,	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	
STATE OF DELAWARE,	§	Cr. ID No. 9911018706
	§	
Appellee.	§	

Submitted: August 15, 2024
Decided: October 9, 2024

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

ORDER

After consideration of the appellant's opening brief, the State's motion to affirm, and the record on appeal, it appears to the Court that:

(1) The appellant, Ralph Reed, appeals from a Superior Court order denying his third motion for postconviction relief under Superior Court Criminal Rule 61. The State has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Reed's opening brief that the appeal is without merit. We agree and affirm.

(2) A Superior Court jury convicted Reed of first-degree murder and possession of a firearm during the commission of a felony. The charges arose from

the fatal shooting of Gregory Howard on November 23, 1999,[1] when Reed was eighteen years old. The Superior Court sentenced him to life imprisonment without parole for the murder conviction and twenty years for the firearm conviction. This Court affirmed on direct appeal.[2]

(3) Reed has filed two prior unsuccessful motions for postconviction relief, the first in 2004[3] and the second in 2013.[4] In November 2023, he filed a third motion for postconviction relief. The Superior Court denied the motion as procedurally barred under Superior Court Rule of Criminal Procedure 61, and Reed has appealed to this Court. We review the Superior Court's denial of a motion for postconviction relief for abuse of discretion, although we review legal or constitutional questions *de novo*.[5]

(4) We first address the issue of which version of Rule 61 applies.[6] "This Court repeatedly has held that a motion for postconviction relief is to be adjudicated in accordance with Rule 61 as it exists at the time the motion is filed."[7] Nevertheless, Reed contends that we should apply the version of Rule 61 that was in effect before

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[1] *Reed v. State*, 2001 WL 819587, at *1 (Del. July 12, 2001).
[2] *Id.*
[3] *State v. Reed*, 2005 WL 2615630 (Del. Super. Ct. Oct. 5, 2005), *aff'd*, 2006 WL 1479763 (Del. May 26, 2006).
[4] *Reed v. State*, 2013 WL 5346312 (Del. Sept. 20, 2013).
[5] *Durham v. State*, 2023 WL 1488456, at *1 (Del. Feb. 2, 2023).
[6] *Cf. id.* ("The Court considers the procedural requirements of Rule 61 before addressing any substantive issues.").
[7] *Purnell v. State*, 254 A.3d 1053, 1094 (Del. 2021).

the rule was amended in 2014.[8] He argues that applying the revised version of Rule 61 violates federal due process requirements because the 2014 amendments of Rule 61 became effective without fair notice of the changes to the procedural bars. This argument is unavailing in the circumstances of this case, in which Reed's first and second motions for postconviction relief were considered under the pre-2014 version of Rule 61 and Reed is pursuing a third motion for postconviction relief filed nine years after the Rule 61 procedural bars were amended.[9] We therefore consider whether Reed's claims overcome the procedural bars as set forth in Rule 61 as it existed in November 2023, when Reed filed his third motion for postconviction relief.

(5) Under that rule, Reed's successive motion for postconviction relief was subject to summary dismissal unless it pleaded with particularity either (i) the existence of new evidence that creates a strong inference of actual innocence or that (ii) "a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to

[8] *See id.* at 1094 & n.185 (explaining that the 2014 amendments to Rule 61 eliminated "an exception to the application of the procedural bars involving colorable claims of a miscarriage of justice").

[9] *Cf. id.* at 1094-95 & notes 184-87 (discussing appellant's argument that federal due process considerations required application of pre-2014 version of Rule 61 to appellant's second Rule 61 motion, filed in 2018, but declining to decide the issue because the appellant's claims satisfied the requirements set forth in the revised rule).

[Reed's] case and renders the conviction or death sentence invalid."[10] Reed does not claim that there is new evidence of his actual innocence; rather, he contends that his claims satisfy Rule 61(d)(2)(ii). We conclude that they do not.

(6) Reed argues that his procedural default should be excused under the decision of the United States Court of Appeals for the Third Circuit in *Mack v. Superintendent Mahonoy SCI*,[11] because Reed purportedly was not represented by counsel in his earlier postconviction proceedings. As an initial matter, Reed's position is belied by the record, which reflects that Reed was represented by counsel during his first postconviction proceeding.[12] Moreover, this Court held in *Bennett v. State*[13] that *Mack* "did not create a new rule of constitutional law; the Third Circuit merely applied the United States Supreme Court precedent of *Martinez v. Ryan* to the facts before it."[14] And, in any event, both *Mack* and *Martinez* were decided more

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[10] DEL. SUPER. CT. R. CRIM. PROC. 61(d)(2); *see also id.* R. 61(i)(1)-(5) (establishing bars to postconviction relief and providing that the bars "shall not apply either to a claim that the court lacked jurisdiction or to a claim that satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule"). All references and citations to Rule 61 in this order are to the version of Rule 61 that was in effect from April 6, 2017, through December 31, 2023.

[11] 714 Fed. Appx. 151 (3d Cir. 2017).

[12] *See State v. Reed*, 2005 WL 2615630, at *1 (Del. Super. Ct. Oct. 5, 2005) (stating that Reed's counsel entered an appearance and participated in the evidentiary hearing and briefing).

[13] 2019 WL 5105476 (Del. Oct. 11, 2019).

[14] *Id.* at *2 (footnote citing *Martinez v. Ryan*, 566 U.S. 1 (2012), omitted); *see also Rasin v. State*, 2019 WL 1410748, at *1 (Del. Mar. 27, 2019) ("As this Court has repeatedly held, a claim of ineffective assistance of postconviction counsel does not relieve a defendant of the burden of satisfying the requirements of Rule 61(d)(2) in order to avoid summary dismissal of a second or subsequent postconviction motion."); *Roten v. State*, 2013 WL 5808236, at *1 (Del. Oct. 28, 2013) (stating that "*Martinez* does not hold that there is a federal constitutional right to counsel in first postconviction proceedings").

than one year before Reed filed his third motion for postconviction relief and therefore do not help Reed overcome the procedural bars.[15]

(7) Reed also attempts to satisfy Rule 61(d)(2)(ii) by asserting two challenges to 11 *Del. C.* § 4209, the statute under which he was sentenced to life in prison without parole. First, he contends that this Court's decision in *Rauf v. State*[16] struck down Section 4209 as unconstitutional. In *Rauf*, this Court held that "Delaware's current death penalty statute violates the Sixth Amendment role of the jury as set forth in *Hurst*."[17] In *Powell v. State*, this Court held that *Rauf* applied retroactively to cases on collateral review.[18] But *Rauf* and *Powell* do not "appl[y] to [Reed's] case and render[] the conviction or death sentence invalid,"[19] because Reed received a sentence of life imprisonment, not a death sentence.[20]

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[15] *See* DEL. SUPER. CT. R. 61(i)(1) (barring a motion for postconviction relief that "asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final" if the motion is filed "more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court").

[16] 145 A.3d 430 (Del. 2016).

[17] *Rauf*, 145 A.3d at 433 (referring to *Hurst v. Florida*, 577 U.S. 92 (2016)). Rauf was charged with a murder that occurred on August 23, 2015. Reed was convicted of a crime that occurred on November 23, 1999. Section 4209 was amended several times between 1999 and 2015. Because *Rauf* determined only that the death-penalty provisions of Section 4209 were unconstitutional and Reed was not sentenced to death, the differences between the versions of Section 4209 that applied to Rauf and to Reed are not material to whether Reed's claim satisfies Rule 61(d)(2)(ii).

[18] 153 A.3d 69, 76 (Del. 2016).

[19] DEL. SUPER. CT. R. CRIM. PROC. 61(d)(2)(ii).

[20] *See Garvey v. State*, 2018 WL 6824585 (Del. Dec. 26, 2018) (holding that successive motion for postconviction relief was procedurally barred and stating: "[A]lthough *Rauf* and *Powell* set forth a new rule of constitutional law, those decisions do not apply to invalidate Garvey's conviction or sentence. As we have held many times, *Rauf* did not strike down the entirety of the first-degree murder statute—it struck down only the death penalty portion. Because Garvey was not sentenced to death, but received a sentence of life imprisonment, *Rauf* and *Powell* do not apply to Garvey's case." (citations omitted)); *see also Brice v. State*, 2024 WL 3710504 (Del. Aug. 7,

(8) Second, Reed argues that Section 4209 is unconstitutional as applied to him because he was eighteen at the time of his crime and Section 4209 did not provide the sentencing judge with discretion to impose a lesser sentence than life without parole. At the time of Reed's offense, Section 4209(a) provided: "Any person who is convicted of first-degree murder shall be punished by death or by imprisonment for the remainder of the person's natural life without benefit of probation or parole or any other reduction . . . ."[21] In 2012, the United States Supreme Court held in *Miller v. Alabama* that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'"[22] In lieu of mandatory life without parole sentences for juveniles, "*Miller* required that sentencing courts consider a child's 'diminished culpability and heightened capacity for change' before condemning him or her to die in prison."[23] In 2016, the Court held in *Montgomery v. Louisiana* that *Miller* applies retroactively in cases on collateral review.[24]

(9) Reed argues that, under the reasoning of *Miller*, Section 4209 is unconstitutional as applied to youthful offenders who, like him, were between the

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2024) (affirming denial of successive motion for postconviction relief and stating that *Powell* "did not create a new, retroactively applicable rule of constitutional law requiring the vacatur of the appellant's life sentence").

[21] 11 *Del. C.* § 4209(a) (1999).

[22] 567 U.S. 460, 465 (2012).

[23] *Montgomery v. Louisiana*, 577 U.S. 190, 195 (2016) (quoting *Miller*, 567 U.S. at 479).

[24] *Id.* at 206.

ages of eighteen and twenty when they committed their crimes. Indeed, some state supreme courts have extended *Miller*'s reasoning to "emerging adult" offenders between the ages of eighteen and twenty, holding that such offenders may never be sentenced to life without the possibility of parole[25] or that such a sentence may be imposed only if the sentencing court determines that the sentence is appropriate after individualized consideration of the "mitigating characteristics of youth."[26] But neither this Court nor the United States Supreme Court has held that a sentencing scheme mandating a sentence of life without parole for first-degree murder is unconstitutional as applied to an eighteen-year-old offender, and this argument therefore does not satisfy Rule 61(d)(2)(ii).[27]

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[25] *See Commonwealth v. Mattis*, 224 N.E.3d 410, 428 (Mass. 2024) (holding, under Massachusetts state constitution, that "it is unconstitutional to sentence individuals from eighteen to twenty years of age to life without the possibility of parole"). *Cf. also id.* at 427-28 (stating that twenty-two states and the District of Columbia "do not mandate life without parole in any circumstance," the "United Kingdom has banned life without parole for any offender under twenty-one years of age at the time of the offense," and "in 2022, the Supreme Court of Canada unanimously ruled that life without parole sentences were unconstitutional for all offenders, regardless of age").

[26] *People v. Parks*, 987 N.W.2d 161, 165, 171 (Mich. 2022) (holding that mandatory sentence of life without parole for eighteen-year-old offender violated the Michigan Constitution's ban on "cruel or unusual" punishment); *In re Monschke*, 482 P.3d 276, 288 (Wash. 2021) ("There is no meaningful cognitive difference between 17-year-olds and many 18-year-olds. When it comes to *Miller*'s prohibition on mandatory [life without parole] sentences, there is no constitutional difference either. Just as courts must exercise discretion before sentencing a 17-year-old to die in prison, so must they exercise the same discretion when sentencing an 18-, 19-, or 20-year-old.").

[27] *See Shah v. State*, 2018 WL 2110995, at *1 (Del. May 7, 2018) (affirming denial of successive motion for postconviction relief and stating that the "Superior Court did not err when ruling that the *Miller* holding, although retroactively applicable in appropriate cases, did not apply in Shah's case because Shah was eighteen years old when he committed the offense"). *Cf. also Fatir v. State*, 2016 WL 3525273, at *2 (Del. May 24, 2016) (rejecting argument that mandatory life without parole sentence for appellant who was twenty-two at the time of his crime was unconstitutional).

(10) Finally, Reed also asserts that his counsel provided ineffective assistance by failing to raise a *Batson*[28] claim, challenge the voir dire, or investigate and subpoena certain witnesses. These contentions are not based on any new rule of constitutional law and therefore are procedurally barred.[29]

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

BY THE COURT:

/s/ Karen L. Valihura
Justice

[28] *Batson v. Kentucky*, 476 U.S. 79 (1986).

[29] *See* DEL. SUPER. CT. R. CRIM. PROC. 61(d)(2)(ii) (providing that a successive motion for postconviction relief is not subject to summary dismissal if it pleads with particularity that "a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant's case and renders the conviction or death sentence invalid"); *id.* R. 61(i)(1) (barring a motion for postconviction relief that "asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final" if the motion is filed "more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court").

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Filing ID 75004224
Case Number 165,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RALPH REED,	§	
	§	No. 165, 2024
Defendant Below,	§	
Appellant,	§	Court Below:
	§	
v.	§	Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	
	§	CR. ID No. 9911018706(S)
Appellee.	§	

Submitted: November 12, 2024
Decided: November 14, 2024

Before **SEITZ**, Chief Justice, **VALIHURA, TRAYNOR, LEGROW**, and **GRIFFITHS**, Justices, constituting the Court *en Banc*.

ORDER

This 14th day of November 2024, it appears to the Court that the Appellant has filed a motion for rehearing *en Banc* of this Court's October 9th, 2024 Order. After careful consideration, the Court finds no basis to grant rehearing *en Banc*.

NOW, THEREFORE, IT IS ORDERED that the Appellant's Motion for Rehearing *en Banc* is DENIED.

BY THE COURT:

/s/ Karen L. Valihura
Justice

STATE OF DELAWARE }
} **ss.**
KENT COUNTY }

I, Lisa A. Dolph, Clerk of the Supreme Court of the State of Delaware, do hereby certify that the foregoing is a true and correct copy of the Orders dated October 9, 2024 and November 14, 2024, in ***Ralph Reed v. State of Delaware***, No. 165, 2024, as it remains on file and of record in said Court.

IN TESTIMONY WHEREOF,

I have hereunto set my hand and affixed the seal of said Court at Dover this 14th day of Noveber A.D. 2024.

/s/ Lisa A. Dolph

Clerk of Supreme Court

EFiled: Nov 14 2024 10:29AM EST
Filing ID 75004498
Case Number 165,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RALPH REED	§	No. 165, 2024
	§	
v.	§	Court Below: Superior Court of the
	§	State of Delaware
STATE OF DELAWARE	§	
	§	Cr. ID No. 9911018706

The following docket entry has been e-filed in the above cause.

November 14, 2024. Record and Mandate to Clerk of Court Below. **Case closed.**

cc: The Honorable Craig A. Karsnitz
Mr. Ralph Reed
John J. Williams, Esquire

Prothonotary
Received Above

By _____

Date _____

Date: November 14, 2024

/s/ *Lisa A. Dolph*
Clerk of Supreme Court

MANDATE

THE SUPREME COURT OF THE STATE OF DELAWARE

TO: Superior Court of the State of Delaware:

GREETINGS:

WHEREAS, in the case of:

State of Delaware v. Ralph Reed

Cr. ID. No. 9911018706

a certain judgments or orders were entered on the 3rd day of April 2024, to which reference is hereby made; and **WHEREAS**, by appropriate proceedings the judgment or order was duly appealed to this Court, and after consideration has been finally determined, as appears from the Orders dated October 9, 2024 and November 14, 2024, certified copies of which are attached hereto;

ON CONSIDERATION WHEREOF IT IS ORDERED AND ADJUDGED that the order or judgment be and is hereby **AFFIRMED**.

/s/ *Lisa A. Dolph*

Clerk of Supreme Court

Issued: November 14, 2024

Supreme Court No. 165, 2024

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR Sussex COUNTY

STATE OF DELAWARE *

V. * CrA. No.: _____

* ID# 9911018706 (R-1)

Ralph Reed *
Defendant

AFFIDAVIT

I, Jerome B Reed, being duly sworn, deposes and says: I WAS AT LITTLE CREEK APARTMENTS ON 11-23-99 AT 10:30 P.m. WHEN A BLUE; WHITE FORD BRONCO CAME UP THE STREET WITH A WHITE MAN DRIVING THE BLUE; WHITE FORD BRONCO, I WAS STANDING IN THE PARKING lot OF LITTLE CREEK APARTMENTS. WHEN THIS LADY NAME YVONNE DeShields WAS STANDING ON THE CORNER OF LITTLE CREEK APARTMENTS STORE CORNER. When YVONNE DeShields STOPPED THE BLUE; WHITE FORD BRONCO WITH A WHITE MAN DRIVING. YVONNE DeShields THEN WALKED OVER TO THE BLUE; WHITE FORD BRONCO DRIVER'S SIDE AND WAS TALKING about SOMETHING WITH THE WHITE MAN. YVONNE DeShields THEN WALKED AROUND to the PASSENGER'S SIDE of the BLUE; WHITE FORD BRONCO and got IN AND THEY DRUVE off, only driving AROUND the Block AND BACK to the SAME CORNER WHERE SHE GOT PICKED UP AT THE STORE CORNER of little CREEK APARTMENTS. YVONNE DeShields THEN GOT OUT of the BLUE; WHITE FORD BRONCO AND CALLED this other CAR that WAS Coming

Jerome Reed

SUBSCRIBED AND SWORN before me this 24th day of November, 2004

Timothy J. Martin
(Notary Public)

my Commission expires: June 14th, 2006

Ex.

WENT UP to the DRIVER [illegible] WHAT SHE WAS SAYING TO KENYON HORSEY, I DONT NO WHAT SHE WAS SAYING TO KENYON HORSEY, BUT the DRIVER THEN GOT OUT OF HIS CAR AND WENT UP to the BLUE: White FORD BRONCO to SPEAK with the WHITE MAN. KENYON HORSEY THEN WENT IN HIS POCKET AND Pulled Something OUT AND GAVE it to the White MAN that WAS driving The Blue: White Ford BRONCO, The White MAN Then Pulled off. KENYON HORSEY then Pulled OUT A GUN AND SHOT AT The WHITE MAN, in the Blue: White Ford BRONCO, I dont KNOW how Shots WERE FIRED BUT the White MAN THEN RAN into A House With His Blue: white Ford BRONCO. KENYON HORSEY THEN GAVE The gun to YVONNE DeShields I Couldn't hear What KENYON HORSEY said to YVONNE DeShields BUT She then WALKED off QUICKLY TOWARDS The GRAVEYard Later that Night YVONNE DeShields WAS sitting in KENYON HORSEY CAR in Little CREEK APARTMENTS PARKING LOT TALKING About Something that WAS the LAST I SEEN of YVONNE DeShields AND KENYON HORSEY.

Jerome Reed

Subscribed before me and
Notarized on PG 1 of this
document TTM

SUPERIOR COURT
OF THE
STATE OF DELAWARE

CRAIG A. KARSNITZ
RESIDENT JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

April 3, 2024

Ralph Reed
SBI #00320813
James T. Vaughan Correctional
Center
1181 Paddock Road
Smyrna, DE 19977

Re: *State of Delaware v. Ralph Reed*
Def. ID# 9911018706
Third Motion for Postconviction Relief (R-3)

Dear Mr. Reed:

You were convicted of First Degree Murder and Possession of a Firearm During the Commission of a Felony ("PFDCF") by a jury on May 16, 2000 and sentenced to life without parole on January 19, 2001. Your direct appeal to the Delaware Supreme Court was denied on August 1, 2001.

You have filed two (2) previous Petitions for Postconviction Relief under Delaware Superior Court Rule 61 ("Rule 61"). On July 8, 2004, you filed your first Rule 61 Petition, which was supplemented on July 15, 2004. This Petition was denied by this Court on October 5, 2005. The Delaware Supreme Court affirmed this

denial on June 20, 2006.

On June 26, 2013, you filed your second Petition for Postconviction Relief, which was dismissed by this Court on July 1, 2013. The Delaware Supreme Court affirmed this denial on October 25, 2013.

On November 8, 2023, you filed your third Petition for Postconviction Relief. That same day you requested the appointment of postconviction counsel to represent you. On December 22, 2023, you requested an evidentiary hearing on the issues raised in your third Rule 61 Petition. This is my decision on your third Petition.

In your third Petition, you state four grounds for relief: (1) the pre-2014 version of Rule 61(i)(5)'s exceptions to the procedural bars should apply to the Petition, allowing relief for a "miscarriage of justice;" (2) your counsel at trial ("Trial Counsel") was ineffective for failure to challenge the sentence after the first degree murder statute[1] was amended when the death penalty was declared unconstitutional; (3) Trial Counsel was ineffective for failure to bring a *Batson*[2] claim with respect to the treatment of potential black jurors; and, (4) because of your age at the time of the murder (18), you should not have been sentenced to life without the possibility of parole.[3]

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[1] 11 *Del. C.* § 4209.
[2] 476 U.S. 79 (1986).
[3] *Miller v. Alabama*, 567 U.S. 460 (2012); Eighth Amendment to the United States Constitution.

Before addressing the merits of your Rule 61 Motion, I must first address the four procedural bars of Superior Court Criminal Rule 61(i).[4] If a procedural bar exists, as a general rule I will not address the merits of the postconviction claim.[5] Under the Delaware Superior Court Rules of Criminal Procedure, a motion for post-conviction relief can be barred for time limitations, successive motions, procedural default, or former adjudication.[6]

First, a motion for postconviction relief exceeds time limitations if it is filed more than one year after the conviction becomes final, or if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right was first recognized by the Supreme Court of Delaware or the United States Supreme Court.[7] Your conviction became final for purposes of Rule 61 on August 1, 2001, the date on which the Delaware Supreme Court issued its mandate finally determining your case on direct review.[8] Thus, you filed your third Petition long after this one-year period had run. Therefore,

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[4] *Ayers v. State*, 802 A.2d 278, 281 (Del.2002) (citing *Younger v. State,* 580 A.2d 552, 554 (Del. 1990).

[5] *Bradley v. State*, 135 A.3d 748 (Del 2016); *State v. Page*, 2009 WL 1141738, at*13 (Del. Super. April 28, 2009).

[6] Super. Ct. Crim. R. 61(i).

[7] Super. Ct. Crim. R. 61(i)(1).

[8] Super. Ct. Crim. R. 61(m)(2).

consideration of your Rule 61 Motion is procedurally barred by the one-year limitation.

Second, second or subsequent motions for postconviction relief shall be summarily dismissed, unless you were convicted after a trial and the motion either pleads with particularity that either (i) new evidence exists that creates a strong inference of actual innocence in fact, or (ii) a new rule of constitutional law, made retroactive by the United States Supreme Court or the Delaware Supreme Court, applies to your case and renders your conviction invalid.[9] This is your third Rule 61 Petition. Neither of these two conditions applies. Therefore, consideration of your Rule 61 Petition is procedurally barred by this provision.

Third, grounds for relief "not asserted in the proceedings leading to the judgment of conviction" are barred unless the movant can show "cause for relief from the procedural default" and "prejudice from a violation of [movant's] rights."[10] Your second and third grounds for relief are based on claims of ineffective assistance of counsel. It is well settled under Delaware law that, as collateral claims, ineffective assistance of counsel claims are properly raised for the first time in postconviction

[9] Super. Ct. Crim. R. 61(i)(2); Super. Ct. Crim. R. 61(d)(2)(i) and (ii).
[10] Super. Ct. Crim. R. 61(i)(3).

proceedings.[11] Thus, this bar would not apply to Grounds 2 and 3 if they were not otherwise procedurally barred.

Fourth, grounds for relief formerly adjudicated in the case, including "proceedings leading to the judgment of conviction, in an appeal, in a post-conviction proceeding, or in a federal habeas corpus hearing" are barred.[12] Your first and fourth grounds for relief have already been adjudicated in your first and second Rule 61 Petitions. You cannot use a third Rule 61 Petition as a vehicle to relitigate these issues. Grounds 1 and 4 are barred by this provision.

Finally, the four procedural bars do not apply to a claim that pleads with particularity that either (i) new evidence exists that creates a strong inference of actual innocence in fact, or (ii) a new rule of constitutional law, made retroactive by the United States Supreme Court or the Delaware Supreme Court, applies to your case and renders your conviction invalid.[13] You make no such pleadings, thus this exception does not apply.

I find that, based on your Petition and my thorough review of the record of

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[11] *State v. Schofield*, 2019 WL 103862, at *2 (Del. Super. January 3, 2019); *Thelemarque v. State*, 2016 WL 556631, at *3 (Del. Feb. 11, 2016) ("[T]his Court will not review claims of ineffective assistance of counsel for the first time on direct appeal."); *Watson v. State*, 2013 WL 5745708, at *2 (Del. Oct. 21, 2013) ("It is well-settled that this Court will not consider a claim of ineffective assistance that is raised for the first time in a direct appeal.").

[12] Super. Ct. Crim. R. 61(i)(4).

[13] Super. Ct. Crim. R. 61(i)(5); Super. Ct. Crim. R. 61(d)(2)(i) and (ii).

the prior proceedings in this case, you are not entitled to relief. I am therefore entering an order for summary dismissal under Rule 61.[14]

Your Rule 61 Petition is **DENIED.** – (181)

Since your Rule 61 Petition is procedurally barred, your Motion for the Appointment of Postconviction Counsel to represent you, and your Motion for an Evidentiary Hearing, are moot.

Your Motion to Appoint Counsel is **DENIED.** – (182)

Your Motion for an Evidentiary Hearing is **DENIED.** (183)

IT IS SO ORDERED.

Very truly yours,

/s/Craig A. Karsnitz
Craig A. Karsnitz, Resident Judge

cc: Prothonotary

[14] Super. Ct. Crim. R. 61(d)(5).