

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SAMUEL MAJOR,	§
	§
Defendant Below-	§ No. 334, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. Nos. S93-05-0457
	§
Plaintiff Below-	§ 0458
Appellee.	§

Submitted: December 7, 2000

Decided: January 17, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices

ORDER

This 17th day of January 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Samuel Major, filed this appeal from the May 16, 2000 order of the Superior Court denying his second motion for postconviction relief. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Major claims that: i) the Superior Court abused its discretion in referring this matter to a Commissioner of the Superior Court for findings of fact and recommendations; ii) the Superior Court erred in finding that his claims were procedurally barred; iii) his 1994 sentence violated the Double

Jeopardy Clause; iv) the Superior Court erred at trial in its instructions to the jury; v) his case was prejudiced by prosecutorial misconduct; vi) the prosecution did not carry its burden of proof at trial; and vii) his trial counsel provided ineffective assistance by conducting an inadequate investigation and failing to arrange for a psychiatric examination. To the extent Major has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court.¹

¹*Murphy v. State*, Del. Supr., 632 A.2d 1150, 1152 (1993). In his motion for postconviction relief in the Superior Court, Major also argued that his sentence violated 11 Del. C. § 635 and that the Superior Court erred at trial by permitting evidence of prior bad acts.

(3) Major was convicted of murder in the second degree and possession of a deadly weapon during the commission of a felony. On the murder conviction, he was sentenced to 15 years incarceration at Level V, to be suspended after 10 years for 1 year at Level IV work release, followed by 4 years probation at Level II. On the conviction for possession of a deadly weapon, he was sentenced to a mandatory 5 years of incarceration at Level V. This Court affirmed Major's convictions and sentences on direct appeal.² This Court also affirmed the Superior Court's subsequent denial of Major's first motion for postconviction relief.³

²*Major v. State*, Del. Supr., No. 26, 1994, Walsh, J.(Apr. 20, 1995) (ORDER).

³*Major v. State*, Del. Supr., No. 278, 1996, Berger, J., 1996 WL 678606 (Nov. 14, 1996) (ORDER).

(4) When reviewing a motion under Superior Court Criminal Rule 61, this Court must first consider the procedural requirements of the Rule before addressing any substantive issues.⁴ Major's third, fourth, fifth and sixth claims are time-barred because they were filed more than three years after the judgment of conviction became final.⁵ Major's claim of ineffective assistance of counsel is procedurally barred because it was previously asserted, unsuccessfully, in Major's first motion for postconviction relief.⁶ Moreover, there is no evidence in the record indicating that the Superior Court lacked jurisdiction or 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 judgment of conviction.⁷

(5) Major's claim that the Superior Court abused its discretion in referring this matter to a Commissioner for findings of fact and recommendations is equally unavailing. While Rule 61(d) requires initial referral of a postconviction

⁴*Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990).

⁵Super. Ct. Crim. R. 61(i) (1). The judgment of conviction in this case became final on May 8, 1995, the date the mandate issued. *Jackson v. State*, Del. Supr., 654 A.2d 829, 832 (1995). Major's motion for postconviction relief was filed in the Superior Court on December 3, 1999.

⁶Super. Ct. Crim. R. 61(i) (4).

⁷Super. Ct. Crim. R. 61(i) (5).

motion to the judge who presided at trial,⁸ that judge is authorized by statute to refer the matter, in turn, to a Superior Court Commissioner⁹ and the Superior Court in this case committed no error or abuse of discretion in so doing.

⁸Or, if that judge is unavailable, to another judge in accordance with the procedure of the Superior Court for assignment of its work, as occurred in this case. Super. Ct. Crim. R. 61(d) (1).

⁹10 Del. C. § 512(b).

(6) Major also claims that his sentence was imposed in an illegal manner pursuant to Superior Court Criminal Rule 35(a). Under Rule 35(a), the Superior Court may correct a sentence imposed in an illegal manner “on a motion made within 90 days after the sentence is imposed.”¹⁰ Because Major’s motion for correction of sentence was filed long after the 90-day period, it may be considered only “in extraordinary circumstances.”¹¹ Our review of the record in this case does not reflect any such “extraordinary circumstances.” Moreover, Major has filed numerous motions for correction of sentence since his sentence was imposed in 1994 and Rule 35(b) bars such repetitive motions.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

¹⁰Super. Ct. Crim. R. 35(b).

¹¹Id.