IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| DANNY R. ADKINS, | § | |
| | § | No. 187, 2012 |
| Defendant Below-Appellant, | § | |
| | § | |
| | § | Court Below—Superior Court |
| v. | § | of the State of Delaware |
| | § | in and for Sussex County |
| STATE OF DELAWARE, | § | Cr. ID Nos. 0807047415 |
| | § | 0810021397 |
| Plaintiff Below-Appellee. | § | |
| | § | |

Submitted: May 23, 2013
Decided: June 11, 2013

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

**O R D E R**

This 11th day of June 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Danny R. Adkins, has filed an appeal from the Superior Court's March 28, 2012 order denying his first motion for postconviction relief pursuant to Superior Court Criminal Rule 61. Adkins also appeals from the Superior Court's denial of his motion for the appointment of counsel in connection with his first postconviction motion.[1] For the reasons that follow, we conclude that the Superior Court's judgment

[1] The Superior Court appointed counsel, but only in connection with an additional interview with the child victim that took place after Adkins' conviction and before his sentencing.

must be reversed and this matter remanded to the Superior Court for further proceedings in accordance with this Order.

(2) On April 10, 2013, Adkins' appeal was stayed pending this Court's decision in *Holmes v. State*, Del. Supr., No. 350, 2012, which concerned the issue of the appointment of counsel in an indigent movant's first postconviction proceeding. By order dated May 6, 2013, the Superior Court amended Rule 61 of its Rules of Criminal Procedure to provide that the Superior Court would "appoint counsel for an indigent movant's first postconviction proceeding." The amended Rule further specified that it "shall be effective on May 6, 2013 and shall apply to postconviction motions filed on or after that date." On May 23, 2013, this Court issued its decision in *Holmes v. State*, reversing the June 7, 2012 order of the Superior Court, which denied Holmes' motion for appointment of counsel in connection with his first postconviction proceeding.

(3) Although Adkins filed his Rule 61 motion before the effective date of the Superior Court's Rule 61 amendment, we reach the same result as if the amended Rule were applicable to his case. We conclude that, by denying Adkins' motion for the appointment of counsel in connection with his first postconviction proceeding, and under the particular circumstances

of this case, the Superior Court abused its discretion.[2] Because we reverse and remand to the Superior Court for the appointment of counsel for Adkins, we decline to address the merits of Adkins' Rule 61 motion in this appeal.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's March 28, 2012 order denying Adkins' motion for the appointment of counsel is REVERSED and this matter is REMANDED for further proceedings in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[2] *Holmes v. State*, Del. Supr., No. 350, 2012, Jacobs, J. (May 23, 2013).