IN THE SUPREME COURT OF THE STATE OF DELAWARE

LESTER F. ANDERSON,	§	
	§	No. 214, 2013
Defendant Below-	§	
Appellant,	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 30109009DI
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: June 10, 2013
Decided: June 26, 2013

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

O R D E R

This 26th day of June 2013, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Lester F. Anderson, filed an appeal from the Superior Court's March 25, 2013 order denying his fourth motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that this appeal is without merit.[1] We agree and affirm.

(2) The record before us reflects that, in February 1992, Anderson was found guilty by a Superior Court jury of Murder in the First Degree. He was sentenced to life imprisonment. This Court affirmed Anderson's conviction on direct appeal.[2] Anderson subsequently filed three postconviction motions pursuant to Rule 61, all of which were denied by the Superior Court. This Court affirmed the Superior Court's judgment with respect to the first motion.[3] This Court dismissed as untimely Anderson's appeal from the Superior Court's denial of his second motion.[4] Anderson now appeals the Superior Court's denial of his fourth postconviction motion.

(3) In his appeal, Anderson asserts several claims that may fairly be summarized as follows: a) the Superior Court abused its discretion by deciding his postconviction motion and that of his co-defendant in the same order; and b) the Superior Court abused its discretion when it determined that there was no basis for his claims of ineffective assistance of court-appointed postconviction counsel. To the extent that Anderson raised issues

---

[1] Supr. Ct. R. 25(a).
[2] *Anderson v. State*, 1993 WL 169121 (Del. May 14, 1993).
[3] *Anderson v. State*, 1997 WL 346191 (Del. June 6, 1997).
[4] *Anderson v. State*, 2000 WL 1152440 (Del. July 27, 2000). Anderson did not appeal the Superior Court's denial of his third postconviction motion.

in the postconviction motion in the Superior Court that have not been fairly raised in this proceeding, all such issues are deemed to be waived.[5]

(4) Prior to deciding the substantive merits of a postconviction motion, the Superior Court must consider whether the time and/or procedural bars of Rule 61 apply.[6] In this case, the Superior Court correctly determined that Anderson's motion was time-barred pursuant to Rule 61(i)(1). As the Superior Court also correctly concluded, Anderson's claims were procedurally barred as repetitive pursuant to Rule 61(i) (2).

(5) Nor is there any basis in the record to support Anderson's claim that his untimely motion should be considered in the interest of justice pursuant to Rule 61(i) (2) or of a constitutional violation that resulted in a miscarriage of justice pursuant to Rule 61(i) (5). He asserts that the Superior Court violated his rights by deciding both his and his co-defendant's claims in the same order. However, the Superior Court's decision reflects that both Anderson's and his co-defendant's claims were fully and fairly considered, resulting in no prejudice to either of them. Moreover, there is no support in the record for Anderson's claim of ineffective assistance regarding the performance of his court-appointed attorney in postconviction proceedings. As such, we conclude that the Superior Court correctly determined that

---

[5] *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).
[6] *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996).

Anderson had presented no support for his claim that the time and procedural bars of Rule 61 should not be applied in his case.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.[7]

BY THE COURT:

/s/ Carolyn Berger
Justice

[7] Anderson's motion for the appointment of counsel, filed on June 21, 2013 after the State had filed its motion to affirm, is hereby denied in the absence of a showing of good cause. Supr. Ct. R. 26(b).