

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SALIH, f.k.a. CECIL L. HALL,	§
	§ No. 120, 2019
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID No. 0506014139 (N)
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: May 7, 2019
Decided: June 19, 2019

Before **STRINE**, 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, Salih,¹ appeals from the Superior Court’s denial of his “Motion for Relief from Judgment Pursuant to Superior Court Rules.” The State has filed a motion to affirm the Superior Court’s judgment on the ground that it is manifest on the face of Salih’s opening brief that the appeal is without merit. We agree and affirm.

¹ Although the appellant was indicted under the name Cecil L. Hall, it appears that his name was legally changed to Salih before the incident that gave rise to the charges at issue in this case.

(2) In 2006, Salih pleaded guilty to two counts of Burglary Third Degree, in exchange for which the State dismissed multiple additional charges arising from break-ins at a retail store in 2005. On December 1, 2006, the Superior Court sentenced Salih as a habitual offender to a total of twelve years' imprisonment, suspended after ten years for decreasing levels of supervision. Salih filed a direct appeal,² a motion for postconviction relief,³ and multiple motions seeking correction or modification of his sentence.⁴

(3) On February 6, 2019, after Salih had been released from prison and successfully discharged from probation, he filed a "Motion for Relief from Judgment Pursuant to Superior Court Rules." Invoking Superior Court Criminal Rule 57(d) and Superior Court Civil Rule 60(b)(5), he asked the court to find that "it is no longer equitable that the judgment should have prospective application" and to set aside the judgment and expunge his record, so that he would no longer be disenfranchised from society as a result of his convictions. The Superior Court denied the motion,

² *Cecil L. Hall (Salih) v. State*, 2007 WL 3170467 (Del. Oct. 30, 2007).

³ *See Salih v. State*, 2008 WL 4762323 (Del. Oct. 31, 2008) (affirming denial of motion for postconviction relief).

⁴ *See, e.g., Salih Hall v. State*, 2010 WL 4156348 (Del. Oct. 21, 2010) (affirming denial of motion for correction of an illegal sentence); *Salih Hall v. State*, 2009 WL 1578997 (Del. June 5, 2009) (dismissing appeal from denial of motion for correction of an illegal sentence). The record reflects that the Superior Court denied several other motions concerning Salih's sentence; Salih did not appeal all of those decisions, and he voluntarily dismissed appeals from some of them. Salih has also initiated civil litigation challenging Delaware statutes governing the Department of Correction, *e.g., Hall v. Coupe*, 2016 WL 3094406 (Del. Ch. May 25, 2016), and challenging prison conditions, *e.g., Salih v. Markell*, 2010 WL 3314363 (Del. Ch. Aug. 13, 2010).

stating that “Rule 60 of [the] Superior Court Civil Rules is not an available remedy in a criminal postconviction motion.”

(4) Salih then sought reconsideration, arguing that the Superior Court had failed to understand that his motion sought to invoke the Superior Court’s “equitable jurisdiction to determine whether the damaging effect of a criminal conviction, after complete satisfaction of its sanction, should continue to have prospective application.” Salih further argued that he had “no remedy at law to review the harm he continues to suffer on the basis of the presence of the judgment of conviction.” The Superior Court denied the motion for reconsideration, concluding that “the Court did not overlook a controlling precedent or legal opinion as the authority relied upon by [Salih] utilizes the Delaware Court of Chancery’s exclusive equitable jurisdiction and not the legal jurisdiction used by the Court.” Salih has appealed to this Court.

(5) We affirm the Superior Court’s judgment. “Superior Court Criminal Rule 61 provides the exclusive remedy for setting aside a final criminal conviction,” and “Superior Court Civil Rule 60(b) cannot be used to collaterally attack a criminal

conviction.”⁵ Salih can no longer challenge his convictions under Criminal Rule 61, because he is no longer in custody.⁶

(6) Moreover, the Superior Court correctly rejected Salih’s attempt to invoke the “equitable jurisdiction” of the Superior Court. Section 542 of Title 10 of the Delaware Code does not confer equitable jurisdiction on the Superior Court, but rather authorizes that court to “exercise its powers ‘according to law and equity’” as to matters that are within its jurisdiction.⁷ Finally, to the extent that Salih’s record prevents him from engaging in particular professions or chills his ability to secure employment, he must seek a pardon or legislative action.

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/ Leo E. Strine, Jr.

Chief Justice

⁵ *Kane v. State*, 2018 WL 1341710, at *1 (Del. Mar. 14, 2018); *see also Alley v. State*, 2015 WL 7188326, at *1 (Del. Nov. 13, 2015) (“Superior Court Civil Rule 60(b) cannot be used to reopen a judgment in a criminal case. Superior Court Criminal Rule 61 provides the exclusive remedy for setting aside a conviction.” (citations omitted)); *Jackson v. State*, 2007 WL 2231072, at *1 (Del. Aug. 2, 2007) (“The Superior Court correctly determined that neither [Criminal] Rule 35(a) nor [Civil] Rule 60(b) could be used to collaterally attack a criminal conviction. Superior Court Criminal Rule 61 provides the exclusive remedy for setting aside a final judgment of conviction.” (citations omitted)).

⁶ *E.g.*, *Alley*, 2015 WL 7188326, at *2; *see also* SUPER. CT. CRIM. R. 61(a) (“This rule governs the procedure on an application by a person *in custody* under a sentence of this court seeking to set aside the judgment of conviction” (emphasis added)).

⁷ *See generally Snead v. Unemployment Ins. Appeal Bd.*, 486 A.2d 676, 681 n.3 (Del. 1984) (discussing Section 542 and the historic and constitutional separation of law and equity in Delaware).