

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERNEST C. PARSON,	§	
	§	No. 556, 2011
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 86014749DI
Appellee.	§	

Submitted: December 20, 2011

Decided: March 14, 2012

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

**O R D E R**

This 14<sup>th</sup> day of March 2012, it appears to the Court that:

(1) The appellant, Ernest C. Parson, has filed an appeal from the Superior Court’s denial of his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). The appellee, State of Delaware, has moved to affirm the Superior Court’s judgment on the grounds that it is manifest on the face of Parson’s opening brief that the appeal is without merit.<sup>1</sup>

(2) After a jury trial in September 1987, Parson was convicted of three counts of first degree robbery, one of which served as the underlying

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<sup>1</sup> See Del. Supr. Ct. R. 25(a) (governing motions to affirm the judgment of the trial court).

felony offense to two counts of felony murder (hereinafter “FM”).<sup>2</sup> Parson was sentenced to two life sentences on the FM convictions and to thirty years each on the robbery convictions. On direct appeal, this Court affirmed the Superior Court’s judgment.<sup>3</sup>

(3) In his first postconviction motion filed in July 2008, Parson sought to vacate his FM convictions by arguing, under *Williams v. State*, that the evidence at trial failed to show that the two murders were committed in furtherance of the underlying robbery.<sup>4</sup> On August 12, 2008, the Superior Court summarily dismissed the motion, advising Parson by letter order: “The holding in *Williams* does not apply to your case because the evidence presented at trial showed that you beat Sam and Esther Sklut to death in order to rob them. That is, you murdered them in furtherance of committing the felony of robbery.” Parson did not appeal the Superior Court’s decision.

(4) Parson filed his second motion for postconviction relief in June 2011. In one of three claims,<sup>5</sup> Parson again argued that his FM convictions should be vacated under *Williams v. State* because, according to Parson,

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<sup>2</sup> Parson was also convicted of two counts of intentional murder and one count each of second degree conspiracy and escape after conviction.

<sup>3</sup> *Parson v. State*, 1990 WL 17767 (Del. Supr.).

<sup>4</sup> See *Williams v. State*, 818 A.2d 906, 913 (Del. 2002) (holding that a felony murder must “move the underlying felony forward”).

<sup>5</sup> Parson also alleged a § 3507 violation and that he was denied proper cross-examination of a witness. He has not, however, argued those claims on appeal, and therefore the claims are not addressed by this Court. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997) (citing *Murphy v. State*, 632 A.2d 1150, 1152-53 (Del. 1993)).

there was insufficient evidence of the underlying robbery (hereinafter “*Williams* claim”).<sup>6</sup>

(5) By report dated September 1, 2011, a Commissioner recommended that Parson’s second postconviction motion should be dismissed as procedurally barred because the motion was untimely and repetitive and the *Williams* claim was formerly adjudicated. Parson filed objections to the Commissioner’s report and recommendation. Upon *de novo* review, the Superior Court adopted the report and denied Parson’s second postconviction motion. This appeal followed.

(6) It is well-settled that when reviewing an appeal from the denial of postconviction relief, this Court will address any applicable procedural bars before considering the merit of any claim for relief.<sup>7</sup> In this case, the Court agrees with the Superior Court’s decision and concludes that Parson’s second postconviction motion is untimely<sup>8</sup> and repetitive<sup>9</sup> and the *Williams* claim is formerly adjudicated.<sup>10</sup> The Court also concludes that Parson’s claim that there was insufficient evidence to convict him of the FM-related

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<sup>6</sup> In support of the *Williams* claim, Parson cites in part to this Court’s order in *State v. Bridgers*, which affirmed a Superior Court judgment that defendants’ actions in that case constituted aggravated menacing rather than robbery. *State v. Bridgers*, 988 A.2d 939, 944 (Del. Super. Ct. 2007), *aff’d*, 2009 WL 824536 (Del. Supr).

<sup>7</sup> See Del. Super. Ct. Crim. R. 61(i) (listing procedural bars to relief and exceptions to those bars). *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>8</sup> Del. Super. Ct. Crim. R. 61(i)(1).

<sup>9</sup> Del. Super. Ct. Crim. R. 61(i)(2).

<sup>10</sup> Del. Super. Ct. Crim. R. 61(i)(4).

robbery does not provide him with a means to avoid the applicable procedural bars.

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

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice