

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY**

THE STATE OF DELAWARE,)	
)	
v.)	
)	
)	C.R. No. 0707011760
JAYAKANTHAN PALANI,)	
)	
Defendant.)	

Submitted October 18, 2016
Decided December 6, 2016

*John Donahue, Esq., Deputy Attorney General
Colleen E. Durkin, Esq., Attorney for Defendant*

DECISION ON DEFENDANT’S MOTION TO VACATE CONVICTION

On August 30, 2016, Defendant Jayakanthan Palani moved this Court to vacate his convictions for Sexual Harassment and Assault Third Degree under Court of Common Pleas Criminal Rule 35(b). For the reasons discussed below, Defendant’s motion to vacate convictions is **DENIED**.

Facts and Procedural History

On October 17, 2007, Defendant pleaded guilty to Sexual Harassment and an amended charge of Assault Third Degree. This Court sentenced Defendant to thirty days at Level V suspended for one year at Level I probation¹ on each count. Defendant was discharged from probation on October 30, 2008. At the time Defendant pleaded guilty, he was a citizen of India and a Lawful Permanent Resident in the United States. On August 30, 2016, Defendant filed the present Motion to Vacate Convictions, requesting relief under Rule 35(b). Defendant argues his guilty plea was not knowingly or

¹ Both parties state Defendant was sentenced on each count to Probation at Supervision Level II, but the sentencing orders sentenced him to Probation at Supervision at Level I.

voluntarily offered and that he received ineffective assistance of counsel because he was not informed the convictions might cause immigration consequences.

In its October 18, 2016 opposition to Defendant's motion, the State contends Rule 35(b) cannot be used to vacate a conviction, and that Defendant is ineligible for relief under Rule 61 because Defendant lacks standing, or alternatively his claim is procedurally barred by Rule 61(i)(1), and his claim lacks substantive merit. The State asserts Delaware law does not require defense counsel inform a defendant that there may be immigration consequences at sentencing.

Discussion

Defendant erroneously filed this confusing motion under Rule 35(b), arguing his convictions should be vacated because he was not informed by this Court or by his defense attorney that there might be immigration consequences to pleading guilty to the aforementioned crimes. Rule 35 may be used to modify or correct a sentence, but not to vacate a conviction.² The Court, however, will liberally interpret this as a Motion for Post-conviction Remedy under Rule 61.

A defendant lacks standing to seek relief under Rule 61 unless the defendant is in custody or subject to future custody for the conviction.³ In this case, Defendant was discharged from probation on October 30, 2008. He is no longer in custody or subject to future custody for this conviction. Regardless, Defendant's claim is time barred under Rule 61(i)(1); this motion for relief was filed more than one year after judgment of conviction was finalized, and as discussed, *infra*, no retroactively applicable right has

² *Baltazar v. State*, 2015 WL 257334, at *3 (Del. Jan. 20, 2015) (citing *State v. Lewis*, 797 A.2d 1198 (Del. 2002)).

³ Ct. Com. P. Crim. R. 61(a)(1); *See also Baltazar*, 2015 WL 257334, at *3 (citing *Ruiz v. State*, 956 A.2d 643 (Del. May 7, 2008)).

been asserted. There is no indication that Defendant can make a colorable claim that there was a miscarriage of justice.

Even if Defendant did have standing and was not time barred, his substantive claims lack merit. The State correctly asserts that when Defendant pled guilty, neither Delaware courts nor defense counsel were required to inform defendants of potential adverse immigration consequences.⁴ Such obligation was not recognized until *Padilla v. Kentucky*, 559 U.S. 356 (2010), well after Defendant's case was final. The Supreme Court of the United States has further clarified that *Padilla* is not applied retroactively.⁵ Furthermore, Defendant's invocation of the collateral consequence rule to avoid the mootness of a completed sentence is inapplicable to claims for relief under Rule 61.⁶

Conclusion

Defendant alleges that his convictions and completed sentences are causing adverse consequences on his immigration status, because one of the convictions is for a crime of violence with a period of incarceration ordered by a court of one year or more. However, each of Defendant's sentences was for 30 days of incarceration, suspended for probation that was completed long ago. The Court cannot see how these sentences are adversely affecting Defendant's immigration status. Regardless, for the foregoing reasons, the Court cannot grant the relief requested. Defendant's Motion to Vacate Convictions is **DENIED**.

IT IS SO ORDERED this ____ day of _____, 2016.

Kenneth S. Clark, Jr., Judge

State v. Christie, 655 A.2d 836 (Del. Super. 1994), *aff'd*, 1994 WL 734468 (Del. Dec. 29, 1994), *abrogated by Padilla v. Kentucky*, 559 U.S. 356 (2010).

⁵ *Chaidez v. United States*, 133 S.Ct. 1103 (2013).

⁶ *State v. Lewis*, 797 A.2d 1198, 1201 (Del. 2002).

