

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR KENT COUNTY**

<b>STATE OF DELAWARE</b>	)	
	)	
v.	)	RK07-08-0399-01
	)	RK07-08-0402-01
<b>JOSEPH C. JACKSON</b>	)	Del. NS II Controlled Substance (F)
	)	
Defendant.	)	
ID. No. 0708009517	)	

**ORDER**

On this 10<sup>th</sup> day of November, 2011, upon consideration of Defendant’s Motion for Postconviction Relief, the Commissioner’s Report and Recommendation, Defendant’s Objections to Commissioner’s Report and Recommendation and the record in this case, it appears that:

(1) The defendant, Joseph C. Jackson (“Jackson”), pled guilty on December 16, 2008, after a jury had been picked for his trial, to two counts of Delivery of Cocaine, 16 *Del. C.* § 4716(b)(4). Jackson was facing trial on the above charges along with one additional count of Delivery of Cocaine, one count of Maintaining a Vehicle, three counts of Possession of Drug Paraphernalia and two counts of Maintaining a Dwelling. As part of the Plea Agreement, Jackson agreed that he was eligible to be sentenced as an habitual offender pursuant to 11 *Del. C.* § 4214(a) due to his criminal record. Had Jackson gone to trial and been convicted as charged, he would have faced the possibility of life imprisonment due to his criminal record. In exchange for his plea, the State *nolle prossed* the remaining charges and agreed to

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*November 10, 2011*

recommend that Jackson be sentenced to a total of twenty-seven years incarceration, suspended, after serving twelve years pursuant to 11 *Del. C.* § 4214(a), followed by probation. The Court agreed with the recommended sentence and sentenced Jackson after declaring him to be an habitual offender.

(2) Jackson then filed, *Pro se*, a motion for correction of an illegal sentence alleging he was illegally sentenced as an habitual offender. The Court denied his motion and Jackson, *Pro se*, appealed the denial to the State Supreme Court.

(3) The Supreme Court summarized Jackson's claims as follows: “. . .The Superior Court erred by not relying upon Del. Code Ann. tit. 16, § 4763(a)(1)c rather than the habitual offender statute when it imposed sentence, which would have permitted a maximum sentence of only five years at Level V. Therefore, he argues, the Superior Court should have granted his motion for correction of illegal sentence.”<sup>1</sup> The Supreme Court rejected Jackson's arguments and affirmed the Superior Court's order.<sup>2</sup> The mandate issued on September 28, 2009.

(4) Jackson filed the instant Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61, on August 27, 2010.

(5) The Court referred this Motion to the Superior Court Commissioner Andrea M. Freud pursuant to 10 *Del. C.* §512(b) and Superior Court Criminal Rule 61 for proposed finding of facts and conclusions of law.

(6) The Commissioner has filed a Report and Recommendation concluding

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<sup>1</sup> *Jackson v. State*, 2009 WL 2859174 at \*1 (Del.).

<sup>2</sup> *Jackson*, 2009 WL 2859174.

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that the Motion for Postconviction Relief should be denied because it is procedurally barred and previously adjudicated.

(7) Defendant has filed objections to the report.

**NOW, THEREFORE**, after careful and *de novo* review of, and for reasons stated in, the Commissioner's Report and Recommendation dated August 19, 2011,

**IT IS ORDERED** that the Commissioner's Report and Recommendation is adopted by the Court and the Defendant's Motion for Postconviction Relief is **DENIED**.

/s/ Robert B. Young  
J.

RBV/sal  
oc: Prothonotary  
The Honorable Andrea M. Freud  
Counsel  
Defendant  
File

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<b>JOSEPH C. JACKSON</b>	)	Del. NS II Controlled Substance (F)
	)	
Defendant.	)	
ID. No. 0708009517	)	

**COMMISSIONER'S REPORT AND RECOMMENDATION**

**Upon Defendant's Motion for Postconviction Relief  
Pursuant to Superior Court Criminal Rule 61**

Dennis Kelleher, Esq., Deputy Attorney General, Department of Justice, for the State of Delaware.

Joseph C. Jackson, *Pro se*.

FREUD, Commissioner  
August 19, 2011

The defendant, Joseph C. Jackson (“Jackson”), pled guilty on December 16, 2008 after a jury had been picked for his trial to two counts of Delivery of Cocaine,

16 *Del. C.* § 4716(b)(4). Jackson was facing trial on the above charges along with one additional count of Delivery of Cocaine, one count of Maintaining a Vehicle, three counts of Possession of Drug Paraphernalia and two counts of Maintaining a Dwelling. As part of the Plea Agreement Jackson agreed that he was eligible to be sentenced as a habitual offender pursuant to 11 *Del. C.* § 4214(a) due to his criminal record. Had Jackson gone to trial and been convicted as charged, he would have faced the possibility of life imprisonment due to his criminal record. In exchange for his plea, the State *nolle prossed* the remaining charges and agreed to recommend that Jackson be sentenced to a total of twenty-seven years incarceration, suspended, after serving twelve years pursuant to 11 *Del. C.* § 4214(a), followed by probation. The Court agreed with the recommended sentence and sentenced Jackson after declaring him to be a habitual offender.

Jackson then filed, *Pro se*, a motion for correction of an illegal sentence alleging he was illegally sentenced as a habitual offender. The Court denied his motion and Jackson, *Pro se*, appealed the denial to the State Supreme Court. The Supreme Court summarized Jackson's claims as follows: “. . .The Superior Court erred by not relying upon Del. Code Ann. tit. 16, § 4763(a)(1)c rather than the habitual offender statute when it imposed sentence, which would have permitted a maximum sentence of only five years at Level V. Therefore, he argues, the Superior Court should have granted his motion for correction of illegal sentence.”<sup>3</sup> The Supreme Court rejected Jackson's arguments and affirmed the Superior Court's

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<sup>3</sup> *Jackson v. State*, 2009 WL 2859174 at \*1 (Del.).

order.<sup>4</sup> The mandate issued on September 28, 2009. Finally, Jackson filed the instant Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61, on August 27, 2010 in which he alleges one ground for relief.

### **JACKSON'S CONTENTIONS**

In his motion he raises the following and only ground for relief:

Ground One:           Ineffective counsel.  
Counsel permitted plea and sentencing under 11 Del. C. 4214(a) when legislature made clear that 16 Del. C. 4763(a)(1)(c)(2)(a) was sole sentencing statute.

Thereafter Jackson filed a "Reply" on February 11, 2011 which incorporates his "Memorandum" of twenty-one pages which he claimed to have filed on September 25, 2010. The Court's docket and file indicates that Jackson never filed any memorandum until after the response by the State and his former counsel. In his February 11, 2011 memorandum he added the following grounds for relief:

1. Multiplicity Violation: Williams v. State, 796 A.2d 1281 (Del. 2002) should have limited Mr. Jackson's liability to one count of Delivery of Cocaine under 16 Del. C. 4751 (Memorandum, pp. 3, 7-10, 19-21);
2. No Prison Sentence Violation: Under the drug user vs. drug profiteers dichotomy, Mr. Jackson was not subject to a prison sentence under 16 Del. C. 4751(a) – that as a drug user, 16 Del. C. 4751(a) only permitted a fine (and possible treatment?) (Memorandum, pp. 3, 11-12, 19-21); and

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<sup>4</sup> *Jackson*, 2009 WL 2859174.

3. Drug Repeat Offender Violation: Under 74 Del. Laws c. 106 and 74 Del. Laws c. 345, the Delaware legislature reiterated that 16 Del. C. 4763 is the exclusive sentencing authority for repeat (or habitual) drug offenders [to the exclusion of 11 Del. C. 4714(a)] applicable to Mr. Jackson's drug offense (Memorandum, pp. 3, 5-6, 13-19, 19-21).

### DISCUSSION

Under Delaware law, this Court must first determine whether Jackson has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of his postconviction relief claim.<sup>5</sup> This is Jackson's first Motion for Postconviction Relief and the original motion alleging a single ground for relief was filed within one year of his conviction becoming final, so the requirements of Rule 61(i) - (1) requiring filing within one year and (2) - requiring that all grounds for relief be presented in the initial Rule 61 motion, are met, as to Ground One alone. However, the additional grounds Jackson raised when he submitted his reply to the State and prior counsel on February 11, 2011, are time barred by Rule 61(i)(1)<sup>6</sup> unless he asserts a retroactively applicable right that is newly recognized after the judgment of conviction. Jackson has not alleged such a right and these new grounds for relief are time barred by Rule 61(i)(1).

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<sup>5</sup> *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>6</sup> The Court will not tolerate "sandbagging" as Jackson is decidedly trying to do by adding new grounds for relief after the parties have responded.

Jackson's only remaining ground for relief and the only ground he raised in his initial timely filing was raised on appeal of the denial of his Motion for Correction of Illegal Sentence, and the Supreme Court found his argument to be without merit. Therefore, to the extent Jackson argues he was illegally sentenced, his claim is barred by Rule 61(i)(4), as previously adjudicated. Rule 61(i)(4) bars any ground for relief that was formerly adjudicated unless reconsideration of the claim is warranted in the interest of justice.<sup>7</sup> Jackson has made no attempt to argue why reconsideration of this claim is warranted in the interest of justice. The interest of justice exception of Rule 61(i)(4) has been narrowly defined to require that the movant show that the "subsequent legal developments have revealed that the trial court lacked the authority to convict or punish" him.<sup>8</sup> Jackson has made no attempt to demonstrate why his claim should be revisited. This Court is not required to reconsider Jackson's claim simply because it is "refined or restated."<sup>9</sup> For this reason, this claim for relief should be dismissed as previously adjudicated under Rule 61(i)(4).

I find Jackson's motion is procedurally barred by Superior Court Criminal Rules 61(i)(1) and (4) as time barred and previously adjudicated. I recommend the Court deny his motion.

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<sup>7</sup> Super. Ct. Crim. R. 61(i)(4).

<sup>8</sup> *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996) (quoting *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990)).

<sup>9</sup> *Riley v. State*, 585 A.2d 719, 721 (Del. 1990).



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/s/ Andrea Maybee Freud  
Commissioner

AMF/dsc

oc: Prothonotary  
cc: Hon. Robert B. Young  
Dennis Kelleher, Esq.  
Alexander W. Funk, Esq.  
Joseph C. Jackson, VCC  
File