

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

MONIR A. GEORGE,	)	
	)	
Defendant,	)	
v.	)	ID# 0805035299
	)	
STATE OF DELAWARE	)	

**ORDER**

AND NOW, this day 29<sup>th</sup> of June , 2012, the Court having duly considered Defendant’s Motions for an Evidentiary Hearing and to Reconsider Commissioner’s Report and Recommendation, and the State’s opposition thereto,

**IT APPEARS THAT:**

1. Monir George (“Defendant”) was charged with Murder in the First Degree, Attempted Murder in the First Degree, Reckless Endangering in the First Degree, and 3 counts of Possession of a Firearm During the Commission of a Felony. After a bench trial, Defendant was found Guilty but Mentally Ill of all charges and sentenced to life in prison for First Degree Murder, 15 years at Level V for Attempted Murder, 1 year at Level V for Reckless Endangering, and 3 years at Level V on each weapon conviction.<sup>1</sup>

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<sup>1</sup> *George v. State*, 2010 WL 4009202, at \*1 (Del.) (affirming the decision of the Superior Court).

2. On March 1, 2012, the Court granted Defendant an extension to file a response to Commissioner Vavala's January 13, 2012 Report and Recommendation, denying Defendant's Motion for Post Conviction Relief.<sup>2</sup> On March 14, 2012, Defendant filed a timely "Motion for Evidentiary Hearing and to Reconsider Commissioner's Report Recommendation of January 13, 2012."<sup>3</sup>

3. Defendant seeks an evidentiary hearing to determine whether he received ineffective assistance of counsel.<sup>4</sup> He relies upon a "*rediscovered issue*" concerning an October 21, 2009 office teleconference.<sup>5</sup> Defendant alleges that trial counsel was ineffective when counsel failed to notify him that the conference took place and failed to accept the Court's "recommendation."<sup>6</sup>

4. Defendant failed to raise this issue previously at trial, on direct appeal, or in his initial Motion for Postconviction Relief pursuant to Superior Court Criminal

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<sup>2</sup> *George v. State*, 2012 WL 1994976, at \*1 (Del. Super.).

<sup>3</sup> Defendant's Motion for Evidentiary Hearing and to Reconsider Commissioner's Report and Recommendation ("Def. Mot.") at 1.

<sup>4</sup> Del. Super. Ct. Crim. R. 61(h)(1) provides: "After considering the motion for postconviction relief, the state's response, the movant's reply, if any, the record of prior proceedings in the case, and any added materials, the judge shall determine whether an evidentiary hearing is desirable."

<sup>5</sup> Def. Mot. at 1. The October 21, 2009 office teleconference is not newly discovered evidence, rather Defendant correctly characterizes it, "rediscovered," as it occurred during the course of trial, and was contained within the transcript of the entire proceedings. Defendant had access to the hard copy of the transcript during his direct appeal. *See* Motion to Withdraw as Counsel (Trans. ID No. 32654476) Appendix 2 of 2 at A373.

<sup>6</sup> *Id.* The "recommendation" to which Defendant refers, was not a recommendation, but merely a question posed by the Court to defense counsel. Although the Court noted that it appeared as though Defendant was able to effectively assist in his defense, it inquired as to whether defense counsel had any concerns regarding Defendant's competency in light of his complaints, which included among other things, the inability to sleep in the infirmary. The Court then asked if it should appoint a psychiatrist or psychologist to evaluate Defendant. *See* Transcript of Office Teleconference (D.I. 98) at 28.

Rule 61 (“Rule 61”).<sup>7</sup> Thus, Defendant’s Motions for an Evidentiary Hearing and to Reconsider Commissioner’s Report and Recommendation are **DENIED** pursuant to Rule 61(i)(2) and (3).<sup>8</sup> Additionally, the Court finds that there has not been “a miscarriage of justice” under Rule 61(i)(5).<sup>9</sup>

**IT IS SO ORDERED.**

/s/Jan R. Jurden  
Jan R. Jurden, Judge

cc: Prothonotary

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<sup>7</sup> Del. Super. Ct. Crim. R. 61(i) establishes four procedural bars to motions for postconviction relief: (1) the motion must be filed within one year of the final judgment of conviction; (2) any grounds for relief which were not asserted previously in any prior postconviction proceeding are barred; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules; and (4) any basis for relief must not have been formerly adjudicated in any proceeding.

<sup>8</sup> In Defendant’s Motion, he states, “This issue was not raised before except on the Amendment of 61, which was not considered in the Report and Recommendation Report of January 13, 2012.” *See* Def. Mot. at 2.

<sup>9</sup> Pursuant to Del. Super. Ct. Crim. R. 61(i)(5) a defect under Rule 61(i)(1), (2), or (3) will not bar a “claim that the court lacked jurisdiction or . . . a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”