

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID. No. 1004010625
)	
SHUAKA M. BRISCOE,)	
)	
Defendant.)	
)	

Submitted: September 20, 2011
Decided: October 3, 2011

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE DENIED.**

Mark H. Conner, Esquire, Deputy Attorney General, Department of Justice, Wilmington,
Delaware, Attorney for the State.

Shuaka M. Briscoe, Sussex County Correctional Center, SVOP/SWRU, Georgetown,
Delaware, *pro se*.

PARKER, Commissioner

This 3rd day of October, 2011, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. On April 22, 2010, Defendant Shuaka M. Briscoe pled guilty to one count of Possession of a Controlled Substance (Heroin) Within 1000 Feet of a School. Defendant was immediately sentenced following the plea. Defendant was sentenced to 5 years at Level V, suspended for 18 months at Level IV Work Release, suspended after 6 months at Level IV Work Release, for 1 year at Level III.
2. Defendant Briscoe did not file a direct appeal to the Delaware Supreme Court.
3. On June 24, 2010, Defendant filed a motion for sentence reduction¹, which was denied by the Superior Court on July 6, 2010.²
4. On February 4, 2011, Defendant was found to have violated the terms of his probation on the subject conviction. At the same hearing, Defendant was also found to have violated the terms of another sentence he was serving.³ On the subject conviction, probation was continued as previously imposed following the violation of probation.⁴ On the other conviction (Case No. 0802021882), following the violation of probation hearing, Defendant was to serve (effective December 29, 2010) 4 years and 6 months at Level V, suspended after 38 days at Level V, for 4 years and 6 months at Level IV Work Release, suspended after 6 months at Level IV, for 2 years at Level III.⁵ Defendant's violation of probation of his other conviction was his fourth violation on that conviction.
5. On June 9, 2011, Defendant filed this motion for postconviction relief. In the subject motion, Defendant is not seeking to set aside his judgment of conviction, but is

¹ Superior Court Docket No. 7.

² Superior Court Docket No. 8.

³ See, Superior Court Docket No. 16.

⁴ *Id.*

⁵ *Id.*

seeking only to have his sentence modified. Specifically, Defendant is seeking a modification of his sentence due to the alleged over crowded conditions at the Sussex VOP Center. Defendant is also seeking a grace period before he begins his work release sentence “due to the consecutive time [he has] been incarcerated.” Finally, in the subject motion, Defendant complains about the lack of a “suitable law library” for inmates in general.

6. Before making a recommendation, the Commissioner enlarged the record by directing the State to file a response to the motion. Defendant, although given the opportunity to file a reply, has not done so.⁶

7. The subject motion should be denied for the following reasons. First, Defendant’s claims are not cognizable Rule 61 claims. Defendant’s Rule 61 motion is not the appropriate vehicle to seek the relief requested. As such, Defendant’s motion should be dismissed. A Rule 61 motion is only available to those seeking to set aside a judgment of conviction or a sentence of death, and only where there is a sufficient factual and legal basis for a collateral attack on the conviction or capital sentence.⁷ Defendant is not seeking to set aside his judgment of conviction. Defendant is not challenging his conviction and is only seeking to modify/reduce his sentence. A defendant may not disguise an application for a modification of sentence by couching the motion as a motion for postconviction relief.⁸ Defendant’s motion for postconviction relief should therefore be dismissed.⁹

⁶ Super.Ct.Crim.R. 61(g)(1) and (2).

⁷ Super.Ct.Crim.R. 61(a).

⁸ *State v. Costango*, 2002 WL 234748, at *1 (Del.Super.).

⁹ *Id.* (A motion for postconviction relief should be dismissed when the movant is not collaterally attacking the judgment but appears to be seeking only a modification of his sentence.)

8. Second, even if Defendant's Rule 61 motion was the appropriate vehicle for seeking the relief requested, his motion would be procedurally barred. In order to protect the procedural integrity of Delaware's rules, the court will not consider the merits of a post conviction claim that fails any of Rule 61's procedural requirements.¹⁰

9. Rule 61 (i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;¹¹ (2) any basis for relief must have been asserted previously in a prior postconviction proceeding; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules unless the movant shows prejudice to his rights and cause for relief; and (4) any basis for relief must not have been formally adjudicated in any proceeding. The bars to relief under (1), (2), and (3), however, do not apply to a claim that the court lacked jurisdiction or to 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.¹² Moreover, the procedural bars of (2) and (4) may be overcome if "reconsideration of the claim is warranted in the interest of justice."¹³

10. In this case, Defendant's motion is procedurally barred. Rule 61(i)(1) applies because Defendant filed this motion more than one year after his final order of conviction. Rule 61(m) defines when the one year window for filing a motion for postconviction relief begins to run. In those cases, such as the present case, when the Defendant has not filed a direct appeal, the one year window begins 30 days after the

¹⁰ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹¹ If a final order of conviction occurred on or after July 1, 2005, the motion must be filed within one year. See, Super.Ct.Crim.R. 61(i)(1)(July 1, 2005).

¹² Super.Ct.Crim.R. 61(i)(5).

¹³ Super.Ct.Crim.R. 61(i)(4).

Superior Court imposes sentence.¹⁴ The one year window for filing a motion for postconviction relief began no later than May 23, 2010 and ended one year later on or about May 23, 2011. Defendant failed to file his motion for postconviction relief during this applicable one-year limit. Defendant's motion, filed in June 2011, was filed outside the applicable one-year limit, and is time-barred.

11. The issues raised in this motion for postconviction relief could all have been raised in a timely filed motion. Defendant does not raise anything new or recently discovered or which was not known during the one year window for the timely filing of a postconviction motion. Defendant was aware of, had time to, and the opportunity to raise all of the issues in his post conviction motion in a timely filed motion. Defendant has not offered any explanation of cause which prevented him from raising these claims in a timely manner.¹⁵ Because Defendant's Rule 61 motion was filed more than one year after his conviction became final, Defendant's motion is procedurally barred.

12. In addition to being time-barred, Rule 61(i)(4) also precludes the court's consideration of Defendant's claims seeking a sentence reduction/modification presented herein. Defendant's request for a sentence reduction/modification was already raised and adjudicated in Defendant's motion for a sentence reduction, which was already denied by the court.¹⁶ Consequently, the claims that Defendant raises in the subject motion are barred by Rule 61(i)(4).

¹⁴ Super.Ct.Crim.R. 61(m)(2).

¹⁵ *Outten v. State*, 720 A.2d 547, 556 (Del. 1998)(a showing of cause is satisfied when a movant shows some external impediment which prevented him from raising the claim in a timely manner).

¹⁶ See, Superior Court Docket No. 8.

13. To the extent that Defendant has restated or refined his claims, the Superior Court is not required to re-examine any claim that has received “substantive resolution” at any earlier time simply because the claim is now refined or restated.¹⁷

14. As previously discussed, Defendant’s claim seeking a sentence reduction/modification due to over crowded conditions and his claim seeking a grace period before he begins his work release sentence “due to the consecutive time he has been incarcerated” are not cognizable Rule 61 claims. It is noted that claims for relief from complaints of over-crowding are addressed by 11 *Del. C.* § 4217(c). It is also noted that claims for sentence reductions and/or modifications are presented by way of Rule 35 motions, like the motion Defendant previously filed and which was denied by the court. Defendant does not contend that the time he served was not justified and properly imposed. Indeed, Defendant was convicted of several crimes and was found to have violated the terms of his probation on four occasions in connection with these convictions.

15. Consequently, Defendant’s claim that the inmate population does not have suitable access to the law library is not cognizable in this motion. Defendant’s complaint about the prison conditions in general as he serves his sentence is not a colorable claim attacking constitutional defects leading to his conviction. Moreover, since Defendant has failed to raise any meritorious claim in his Rule 61 motion, Defendant cannot demonstrate that he was prejudiced by his alleged limited access to the library. Where Defendant has not stated any cognizable Rule 61 claim in his motion, his complaint about lack of access to the library is not actionable.¹⁸

¹⁷ *Johnson v. State*, 1992 WL 183069, *1 (Del.Supr.).

¹⁸ See, *Chattin v. State*, 2011 WL 987752, at *3 (Del.Supr.)

16. In this case, Defendant has failed to overcome any of the procedural bars by showing a “colorable claim that there was a miscarriage of justice” or that “reconsideration of the claim is warranted in the interest of justice.” The “miscarriage of justice” exception is a “narrow one and has been applied only in limited circumstances.”¹⁹ The defendant bears the burden of proving that he has been deprived of a “substantial constitutional right.”²⁰ The Defendant has failed to provide any basis, and the record is devoid of, any evidence of manifest injustice. The Court does not find that the “interests of justice” require it to consider the otherwise procedurally barred claims for relief.²¹

For all of the foregoing reasons, Defendant’s Motion for Postconviction Relief should be denied.

IT IS SO RECOMMENDED.

Commissioner Lynne M. Parker

cc: Prothonotary

¹⁹ *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

²⁰ *Id.*

²¹ *Id.*