

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

STATE OF DELAWARE)	
)	
v.)	I.D. No. 30500267DI
)	
WILLIS L. GRAYSON, JR.)	
)	
Defendant)	

Submitted: November 15, 2010
Decided: January 18, 2011

Upon Defendant's Fourth Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

James J. Kriner, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Willis L. Grayson, Jr., Wilmington, Delaware, *pro se*.

COOCH, R.J.

1. This 18th day of January 2011, upon consideration of Defendant's fourth motion for postconviction relief, it appears to the Court that:

2. A jury found Defendant guilty of two counts of Rape Second Degree on September 16, 1985. Defendant was subsequently sentenced on March 7, 1986 to thirty years at Level V for each conviction, sentences to run

consecutively, for a total of sixty years. The Supreme Court of Delaware affirmed Defendant's convictions on direct appeal on April 10, 1987.¹

3. Defendant's first motion for postconviction relief, filed *pro se*, was denied by this Court on December 15, 1992.² The Supreme Court of Delaware affirmed the denial of that motion on March 15, 1993; Defendant raised eight grounds for relief in his initial motion with the Superior Court, but only three when appealing this Court's denial to the Supreme Court of Delaware, thereby waiving the remaining five claims.² As set forth in the Court's opinion denying Defendant's initial motion for postconviction relief, Defendant's alleged grounds for relief were as follows: 1) "Absence of medical record;" 2) "Sufficiency of the evidence;" 3) "Vagueness of statute;" 4) "Admission of the medical record;" 5) "Unlawful use of peremptory challenges;" 6) "Grand jury proceedings;" 7) "Ineffective assistance of counsel;" and 8) "Admission of testimony concerning a 'riding crop.'"³

4. Defendant filed his second motion for postconviction relief *pro se* on May 17, 2002, and this motion was summarily dismissed.⁴ This motion was a "cookie cutter" submission; it was one of multiple identical motions for postconviction relief and supporting memoranda that were submitted by convicted sex offenders within the same general timeframe.⁵ Therefore, Defendant's second motion for postconviction relief was deemed "utterly without merit" and summarily dismissed by this Court.⁶ This summary

¹ *Grayson v. State*, 524 A.2d 1 (Del. 1987).

² *Grayson v. State*, 622 A.2d 1095 (Del. 1993). As discussed *infra* note 23, Defendant apparently filed his initial motion for postconviction relief on June 26, 1992, beyond the three year limitation of Superior Court Criminal Rule 61(i)(1), but this Court determined that the three year period was tolled by virtue of a docketing error with Defendant's July 11, 1989 "Motion for Judgment of Evidentiary [sic] Hearing New Trial."

³ *State v. Grayson*, Del. Super., I.D. No. 30500267DI, Del. Pesco, J. (Nov. 15, 1992) (Mem. Op.) at 2-14.

⁴ *State v. Grayson*, 2002 WL 1335523 (Del. Super. Ct. 2002).

⁵ *Id.*

⁶ *Id.* at *2.

dismissal was affirmed by the Supreme Court of Delaware on October 10, 2002.⁷

5. Defendant filed his third motion for postconviction relief *pro se* on March 27, 2007.⁸ This Court found Defendant's claims to be procedurally barred and summarily dismissed Defendant's third motion for postconviction relief, stating:

It is clear from Defendant's motion and the record of his prior proceedings that Defendant's claims do not meet the high standard that the fundamental fairness exception requires. His first two grounds for relief that allege a double jeopardy violation and lack of jurisdiction are meritless. Additionally, Defendant's third and fourth grounds were previously raised in his first two postconviction relief motions, which were denied by this Court.⁹

6. Most recently, Defendant filed his fourth motion for postconviction relief *pro se* on November 8, 2010.¹⁰ The motion states: "Per the recommendation of The Delaware Supreme Court in its Order of 9-21-10, No. 357, 2010. . .the abovenamed Defendant resubmits the above captioned motion."¹¹

Defendant raises four grounds for postconviction relief in the instant motion: 1) double jeopardy; 2) The "second" trial court lacked jurisdiction; 3) "Filure [sic] to produce and provide Defendant with complete copy of ITC's [presumably "initial trial court"] mistrial transcript," and 4) ineffective assistance of counsel.¹² He clarified his contentions as follows:

⁷ *Grayson v. State*, 812 A.2d 224 (Del. 2002) ("The Superior Court did not err in concluding that Grayson's motion for postconviction relief was time-barred and that Grayson had failed to overcome this procedural hurdle.")

⁸ *State v. Grayson*, 2007 WL 1064451 (Del. Super. Ct. 2007).

⁹ *Id.*

¹⁰ Def.'s Nov. 8, 2010 Mot. for Postconviction Relief.

¹¹ *Id.*

¹² *Id.* See also Def.'s Memorandum in Support of Postconviction Relief Motion at 8 ("[The alleged violation of Defendant's due process rights] is due to [Defendant's] paid counsel's ineffectiveness, which was, and remains the cause, and counsel's errors and omissions, which clearly demonstrate counsel's performance/representation that fell below an objective standard of reasonableness, that Prejudiced Petitioner's defense.").

Wherefore, and due to the following fact[s] as asserted herein, and taken as true: (1) Prosecution lost, and failed to recover its med report. (2) Prosecution's failure to reindict Petitioner as ordered by ITC. (3) 2nd TC lacked jurisdiction to retry Petitioner without a new indictment. (4) 2nd Counsel failed not only to follow through with promised strategic choices of calling aforementioned expert, and lay witnesses, and subpoena mental evaluation records of alleged victim. (5) 2nd Counsel's conduct and representation fell below an objective standard of reasonableness which along with prosecution's, and 2nd TC's abovementioned conducts 1, 2, and 3; were the Responsible Causes, that Prejudiced Petitioner's trials, and defense. (6) Prothonotary [sic] failure to refer Petitioner's first, and second PCRMs, and MCMT, to a Super. Ct. Judge. (7) Prothonotary's failure to notify Petitioner of abovementioned failures, which caused an Unnecessary Delay in, and with Petitioner's ability to file aforementioned court documents in a timely manner; which was the Responsible Cause that Prejudiced Petitioner. (8) ITC, and subsequent judicial entities of review's [sic] denials of Petitioner's motions for mistrial transcripts not only violated State, and Constitutional Rights, but were and remain contrary to clearly established federal law as determined by the U.S. Supreme Court. (9) These denials or decisions by aforesaid judicial entities were based upon unreasonable determinations in light of the facts in and of his Colorable Claims, and (10) Petitioner's 5th, 6th, and 14th Amendments were also violated by the State when failing to produce complete copy of his mistrial transcripts as ordered by Supre.Ct.¹³

7. The merits of a motion for postconviction relief will not be considered if the alleged grounds for relief are procedurally barred.¹⁴ Rather, if it “plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified.”¹⁵

¹³ Def.'s Memorandum in Support of Postconviction Relief Motion at 38.

¹⁴ *See, e.g., Watson v. State*, 602 A.2d 1082 (Del. 1991) (“[T]o preserve the integrity of Delaware's procedural default rules, this Court will not ordinarily consider the merits of a postconviction relief claim before first determining whether the claim is procedurally barred.”) (citation omitted).

¹⁵ Superior Court Criminal Rule 61(d)(4).

8. By its current terms, Superior Court Criminal Rule 61(i)(1) will bar a motion for postconviction relief filed more than one year after a final judgment of conviction, unless the motion asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final. However, this one year time limitation is by virtue of an amendment to the Rule, effective July 1, 2005. Consequently, Defendant's claims are subject to the three year limitations period that was contained in Rule 61(i)(1) prior to the 2005 amendment.¹⁶

A judgment of conviction is final, *inter alia*, "when the Supreme Court [of Delaware] issues a mandate or order finally determining the case on direct review."¹⁷ Defendant's judgment of conviction became final in 1987, when the Supreme Court determined Defendant's case on direct review. Thus, Defendant's motion, filed on November 8, 2010, is clearly outside the applicable three year time limit.

9. Rule 61(i)(2) provides that "[a]ny ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim is warranted in the interest of justice."

10. Rule 61(i)(3) bars any ground for relief "that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows (A) Cause for relief from the procedural default and (B) Prejudice from violation of the movant's rights."

11. Finally, Rule 61(i)(4), bars relief on any ground "that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice."

¹⁶ Given that Defendant's conviction became final over 23 years ago, this distinction is of no consequence.

¹⁷ Superior Court Criminal Rule 61(m)(2).

12. Rule 61(i)(5) provides relief from the procedural bars of Rules 61(i)(1)-(3). By the terms of Rule 61(i)(5), the procedural bars contained in Rules 61(i)(1)-(3) 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.” The defendant bears the burden of proof to establish a constitutional violation.¹⁸

The relief provided by Rule 61(i)(5) is known as the “fundamental fairness” exception; this exception is “extremely narrow and is only applicable ‘in limited circumstances, such as when the right relied upon has been recognized for the first time after the direct appeal.’”¹⁹ Thus, Defendant bears the burden of demonstrating that the Court lacked jurisdiction or a colorable constitutional claim in order to trigger the “extremely narrow”²⁰ exception of Rule 61(i)(5) and avoid the procedural bars of Rules 61(i)(1)-(3).

13. As indicated above, Defendant’s constitutional claims are that

[the initial trial court], and subsequent judicial entities of review’s [sic] denials of Petitioner’s motions for mistrial transcripts not only violated State, and Constitutional Rights, but were and remain contrary to clearly established federal law as determined by the U.S. Supreme Court. . . These denials or decisions by aforesaid judicial entities were based upon unreasonable determinations in light of the facts in and of his Colorable Claims, and. . .Petitioner’s 5th, 6th, and 14th Amendments were also violated by the State when failing to produce complete copy of his mistrial transcripts as ordered by Supre.Ct.²¹

These allegations are merely unsupported and conclusory claims of constitutional violations. Moreover, Defendant was provided with a

¹⁸ *Bailey v. State*, 588 A.2d 1121, 1130 (Del. 1991) (quoting *Younger v. State*, 550 A.2d 552, 555 (Del. 1990)).

¹⁹ *Id.* at 1129 (citation omitted).

²⁰ *Id.*

²¹ Def.’s Memorandum in Support of Postconviction Relief Motion at 38.

transcript of his first trial, at State expense, in 1993.²² The issue of Defendant's subsequent requests for transcripts has been previously adjudicated numerous times;²³ consequently, this ground for relief is squarely within the procedural bar of Rule 61(i)(4).²⁴ To invoke the "interest of justice" exception to Rule 61(i)(4), Defendant is required to "show that subsequent legal developments have revealed that the trial court lacked the authority to convict or punish him."²⁵ Defendant has made no such showing herein.

14. Similarly, Defendant also included the conclusory assertion that "2nd TC lacked jurisdiction to retry Petitioner without a new indictment."²⁶ Conclusory and unsubstantiated claims are insufficient for a Rule 61

²² *State v. Grayson*, Del. Super., I.D. No. 30500267DI, Gebelein, J. (August 9, 1993) (ORDER) ("A mistrial was declared on July 1, 1985 before me in reference to the above named defendant. [Defendant] is requesting a copy of the transcript. This transcript shall be prepared at State expense.").

²³ *State v. Grayson*, Del. Super., I.D. No. 30500267DI, Gebelein, J. (Jan . 19, 1996) (ORDER) ("[T]he Court having considered defendant's motion requesting complete transcript of mistrial, wherefore, the defendant has articulated no reason for needing a more complete copy of the transcript furnished him of the mistrial in his case, wherefore, his motion for transcript at state expense is denied."); *State v. Grayson*, Del. Super., ID. No. 30500267DI, Gebelein, J. (Mar. 14, 1996) ("[U]pon consideration of [Defendant's] Motion for Reconsideration of this Court's decision of January 19, 1996, denying his motion requesting a complete transcript of his mistrial. . . .The Court again finds that the Defendant has not articulated a valid reason that the transcript of his mistrial provided him in 1993 is insufficient such that it warrants granting him a more complete copy of the mistrial transcript at State expense."); *State v. Grayson*, Del. Super., I.D. No. 30500267DI, Cooch, J. (May 31, 2000) (Letter Op.) ("[This Court is] in receipt of your April 10, 2000 'Motion for Release of Transcripts and Motions.' No sufficient reason has been set forth warranting the relief requested in this motion. Accordingly, the motion is denied."); *State v. Grayson*, Del. Super., I.D. No. 30500267DI, Cooch, J. (June 27, 2000) (Letter Op.) ("[This Court is] in receipt of your *pro se* 'Omnibus Documents Motion' filed with the Prothonotary on June 12, 2000. In the above motion you request that the Court reconsider your previous motion for release of transcripts which [this Court] denied on June 1, 2000. The Court will treat the above motion as a motion for reargument. No new arguments have been presented. Accordingly, the above motion is denied.").

²⁴ "Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice."

²⁵ *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990) (citations omitted).

²⁶ Def.'s Memorandum in Support of Postconviction Relief Motion at 38.

motion.²⁷ Consequently, Rule 61(i)(5) is not implicated, and Defendant's claims are procedurally barred. Moreover, this Court has previously ruled that Defendant's claims of a double jeopardy violation and a lack of jurisdiction, are meritless. Thus, these claims are time-barred and formerly adjudicated.²⁸ Put simply, Defendant's repetitive allegations represent a "belated" attempt to re-litigate issues that were fully and fairly addressed during the 23 year post-trial history of this case.²⁹

15. By Defendant's own admission, "all above grounds were raised in initial PCRM [postconviction relief motion] but weren't properly docketed by Prothonotary. . . ." ³⁰ Any errors in docketing were remedied by this Court's determination that the procedural bar of Rule 61(i)(1) was tolled as of the filing date of Defendant's first motion for postconviction relief, which was thoroughly considered and properly denied.³¹ Thus, it is clear from the face of Defendant's instant motion and the record of his prior proceedings that Defendant's claims do not meet the high standard that the fundamental fairness exception requires.

16. Further, to the extent Defendant contends that any of the 10 claims raised in the instant motion are distinct from the claims of his previous three

²⁷ See, e.g., *Zimmerman v. State*, 1991 WL 190298 (Del. Super. Ct. 1991) ("This Court will not address Rule 61 claims that are conclusory and unsubstantiated.") (citations omitted).

²⁸ See *State v. Grayson*, 2007 WL 1064451 (Del. Super. Ct. 2007) ("It is clear from Defendant's motion and the record of his prior proceedings that Defendant's claims do not meet the high standard that the fundamental fairness exception requires. His first two grounds for relief that allege a double jeopardy violation and lack of jurisdiction are meritless. Additionally, Defendant's third and fourth grounds were previously raised in his first two postconviction relief motions, which were denied by this Court.")

²⁹ *Bailey*, 588 A.2d at 1130.

³⁰ Def.'s Nov. 8, 2010 Mot. for Postconviction Relief at 2. Although there was an issue of improper docketing of Defendant's June 28, 1989 request for trial transcripts and July 11, 1989 "Motion for Judgment of Evidentiary [sic] Hearing New Trial," Defendant's first motion for postconviction relief was not filed until June 26, 1992; in light of the apparent docketing error, the Superior Court determined that Defendant's July 11, 1989 served to toll the limitations period found in Rule 61(i)(1) and considered Defendant's first motion for postconviction relief on the merits. *State v. Grayson*, Del. Super., I.D. No. 30500267DI, Del Pesco, J. (Nov. 15, 1992) (Mem. Op.) at 1.

³¹ *Id.*

motions for postconviction relief, any such claims are barred pursuant to Rule 61(i)(2). Rule 61(i)(2) bars “[a]ny ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule. . . unless consideration of the claim is warranted in the interest of justice.”

As a threshold matter, this Court finds that, while perhaps some of Defendant’s claims may be “somewhat differently packaged and articulated, the substance of Defendant’s newest claims”³² have been fully and fairly litigated and decided over the 23 year post-trial history of this case. Further, even if any of Defendant’s instant claims were novel, Defendant has not shown that the consideration of any of his claims is warranted in the interests of justice, as he has failed to articulate any factual basis to support the contention that “subsequent legal developments have revealed that the trial court lacked the authority to convict or punish him.”³³

17. Finally, Defendant contends that he filed the instant motion “by the order of the Supreme Court of the State of Delaware’s decision of Sept. 21, 2010.”³⁴ However, the order of the Supreme Court of Delaware simply denied Defendant’s petition for a Writ of Mandamus to compel the Superior Court to provide Defendant with copies of transcripts from his first trial.³⁵ The Court held that Defendant’s petition “manifestly fails to invoke the original jurisdiction of [the Supreme Court of Delaware].” To the extent Defendant alleges that the instant motion was “by the order” of the Supreme Court of Delaware, the Court’s order provides as follows:

[Defendant] clearly has an adequate remedy available to him in the postconviction process. He may request from the Superior Court the transcripts that he seeks in conjunction with the filing of a motion for postconviction relief under Superior Court Criminal Rule 61. He may also request the appointment of counsel and a hearing on his postconviction motion. If [Defendant] is unsuccessful on the merits of his postconviction motion, then he may appeal to this Court from the Superior Court’s final order

³² *State v. Desmond*, Del. Super., I.D. No. 91009844DI, Cooch, R.J. (January 5, 2011) (Mem. Op.) at 44.

³³ *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990) (citations omitted).

³⁴ Def.’s Memorandum in Support of Postconviction Relief Motion at 1.

³⁵ *Matter of Grayson*, Del. Supr., No. 357, Holland, J. (Sept. 21, 2010) (ORDER).

denying relief, which will bring up any interlocutory rulings for review, as well.³⁶

Thus, the Supreme Court of Delaware merely noted Defendant's ability to pursue his contentions via the postconviction process and to appeal a final order of this Court. Having considered Defendant's moving papers and the extensive history of this case, it "plainly appears"³⁷ that Defendant is not entitled to relief, as all of Defendant's claims are procedurally barred and Defendant has not met the requirements for the "fundamental fairness" or "interest of justice" exceptions to Rule 61(i)'s procedural bars.

18. Therefore, for the reasons stated above, Defendant's fourth motion for postconviction relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

oc: Prothonotary
cc: Investigative Services

³⁶ *Id.*

³⁷ Superior Court Criminal Rule 61(d)(4).