

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

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID No. 1008019055
)	
LARRY S. SAUNDERS,)	
)	
Defendant.)	

Submitted: July 15, 2011
Decided: August 12, 2011

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

Matthew Frawley, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Larry S. Saunders, Howard R. Young Correctional Institute, Wilmington, Delaware,
pro se.

PARKER, Commissioner

This 12th day of August 2011, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. On March 15, 2011, Defendant Larry S. Saunders pled guilty to one count of Robbery First Degree. As part of the plea agreement, the State agreed to recommend an 8 year sentence, to be suspended after 5 years, followed by decreasing levels of probation. This is exactly the sentence the Superior Court imposed. On June 3, 2011, Defendant was sentenced to 8 years at Level V incarceration, suspended after 5 years, followed by decreasing levels of probation.

2. Defendant Saunders did not file a direct appeal to the Delaware Supreme Court.

3. On June 17, 2011, Defendant filed a motion for sentence reduction/modification.¹ In that motion, Defendant contended that he was being illegally detained and that the court lacked jurisdiction to sentence him because the flag in the courtroom had yellow fringes. By Order dated July 5, 2011, the Superior Court denied Defendant's motion.²

4. On July 7, 2011, Defendant filed this motion for postconviction relief. In the subject motion, Defendant raises three contentions: illegal detention, newly discovered evidence and that the court lacked jurisdiction. Each of these three contentions relate to the alleged improper display of the flag in the courtroom. Like his motion for sentence reduction/modification, Defendant again contends that the yellow fringe on the flag in the courtroom was improper and that as a result the court lacked authority to adjudicate Defendant's criminal charges. Defendant contends that the yellow fringe on the flag made it a military flag rendering his court proceeding invalid.

¹ See, Superior Court Docket No. 21.

² See, Superior Court Docket No. 22.

5. Prior to addressing the substantive merits of any claim for postconviction relief, the Court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61.³ If a procedural bar exists, then the claim is barred, and the Court should not consider the merits of the postconviction claim.⁴ Moreover, if it plainly appears from the motion for postconviction relief that the movant is not entitled to relief, the Court may enter an order for its summary dismissal and cause the movant to be notified.⁵

6. Rule 61 (i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;⁶ (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 or 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.⁷ Moreover, the procedural bars of (2) and (4) may be overcome if “reconsideration of the claim is warranted in the interest of justice.”⁸

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁴ *Id.*

⁵ Super.Ct.Crim.R. 61(d)(4).

⁶ If the 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).

⁷ Super.Ct.Crim.R. 61(i)(5).

⁸ Super.Ct.Crim.R. 61(i)(4).

7. Some people, of which my grandmother can be counted among them, are of the belief that fringe adds class, flair and enhances the appearance of any object. Defendant Saunders, however, along with a number of other disgruntled litigants around the country, disagrees with this fashion sense. Defendant Saunders, and other disgruntled litigants like him around the country, argue that yellow fringe on a flag in a courtroom should render their respective court proceedings invalid.

8. In Defendant's motion for reduction/modification of sentence, he contended that the yellow fringe on the flag in the courtroom should result in his sentence being reduced to the three year minimum mandatory from the five year Level V sentence that was imposed. It should be noted that the State recommended an 8 year sentence to be suspended after 5 years as part of its plea agreement with Defendant and that the Superior Court imposed the exact sentence requested. The Superior Court rejected Defendant's contention that the yellow fringe on the flag in the courtroom should somehow result in a reduced sentence and denied Defendant's motion.

9. Defendant's claims in the subject motion, which relate to the alleged improper display of the flag in the courtroom, are waived, procedurally barred, previously adjudicated and without merit.

10. Defendant waived his right to raise errors or defects, including those of constitutional proportions, when he entered into his guilty plea. The record establishes, and Defendant does not contest, that his plea was entered into voluntarily, intelligently and knowingly. As a result, Defendant waived his right to challenge any alleged errors or defects occurring prior to the entry of his plea, even those of constitutional proportions.⁹

⁹ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Modjica v. State*, 2009 WL 2426675 (Del. 2009); *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2004).

Consequently, Defendant waived his challenges to the flag in courtroom when he entered his guilty plea.

11. In addition to having waived his right to challenge the flag in the courtroom when he entered his guilty plea, his claims are also procedurally barred by Superior Court Criminal Rules 61(i)(2) and (3). Defendant never raised his objection to the flag in the courtroom at any time during his plea, during his sentencing, or for that matter on direct appeal. Having failed to raise his objections to the flag in the courtroom at the time of his plea, sentencing or on direct appeal, these claims are now barred pursuant to Rule 61(i)(2) and Rule 61(i)(3).¹⁰

12. Although Defendant contends in conclusory fashion that his challenge to the flag in the courtroom somehow constitutes “newly discovered evidence”, he fails to provide any support for this position. Indeed, in his motion, Defendant contends that the improper flag was “sitting behind Judge Ableman.” The flag sitting behind Judge Ableman was open, obvious and known to Defendant at the time of his sentencing and was not somehow only just recently discovered. There is no justifiable reason for Defendant’s failure to raise his challenge to the flag at the time of sentencing or, for that matter, on direct appeal. Had Defendant raised the issue at the time of sentencing, it could have been immediately addressed.

13. It is noted that even if Defendant had objected to the flag in the courtroom during his plea and/or his sentencing (which he did not), and the court refused to remove the

¹⁰ See, for example, *Koskela v. State of Minnesota*, 690 N.W.2d 133 (Minn.Supr. 2004)(Defendant is not entitled to postconviction review of claims that improper flag displayed in courtroom rendered his convictions invalid where claims were not raised on direct appeal).

flag, the court's refusal to remove the flag would not constitute a violation of Defendant's constitutional rights.¹¹

14. Defendant's motion is also procedurally barred pursuant to Superior Court Criminal Rule 61(i)(4), since the same challenges to the flag have already been raised and formally adjudicated in his motion for sentence reduction/modification.

15. 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 an earlier time simply because the claim is now refined or restated.¹²

16. Even if not waived or procedurally barred, Defendant's claims challenging the flag in the courtroom are without merit.

17. Defendant is not the first to complain about the flag in the courtroom. Around the country, courts have dealt with disgruntled litigants who have argued that their respective proceedings were illegal or unconstitutional because the court displayed a flag with yellow or gold fringe in the courtroom. Defendant is not the first litigant to argue that the fringe on the flag indicates a military court.¹³ All the courts addressing arguments that yellow or gold fringe on a courtroom-displayed flag affects a court's jurisdiction have explicitly rejected those arguments.¹⁴ These cases have gone so far as to label such arguments as "frivolous,"¹⁵ "totally frivolous"¹⁶, "preposterous"¹⁷ and "indisputably meritless."¹⁸

¹¹ See, *State v. Hall*, 8 S.W. 3d 593, 604 (Tenn. 1999).

¹² *Johnson v. State*, 1992 WL 183069, *1 (Del.Supr.).

¹³ See, *Ebert v. State*, 2007 WL 2141557, at *7 (Tex.App. 2007).

¹⁴ See, *Recker v. Dunbar*, 2010 WL 3655516, at *7 (Bkrtcy.N.D. Iowa); *McCann v. Greenway*, 952 F.Supp. 647, 650 (W.D. Mo. 1997); *United States v. Greenstreet*, 912 F.Supp. 224, 229 (N.D. Tex. 1996); *Commonwealth v. Appel*, 652 A.2d 341, 343 (Pa. Super. 1994); and *Leverenz v. Torluemlu*, 1966 WL 272538, at *1 (N.D. Ill. 1996).

¹⁵ *United States v. Greenstreet*, 912 F.Supp. 224, 229 (N.D. Tex. 1996).

18. The same specific arguments raised by Defendant in the subject motion were addressed in detail in two cases: *Ebert v. State*,¹⁹ and *McCann v. Greenway*.²⁰ Although the detailed analysis engaged in by those courts is not reiterated herein, it is sufficient to note that the executive order to which Defendant refers, Executive Order No. 10,834, does not mention fringe, restrict the use of fringe on flags, or ascribe a particular symbolic or legal ramification or implication of the use of fringe on flags.²¹ The fringe is not regarded as an integral part of the flag and its presence does not constitute an unauthorized addition to the design prescribed by statute.²²

19. The design of the flag is proscribed by the U.S. Code, which requires that the flag of the United States shall be 13 horizontal stripes, alternating red and white; and the union of the flag shall be 48 stars, white in a blue field, with one star added for each additional state.²³ The placing of a fringe on the flag is neither required nor prohibited by law.²⁴ From a historical and legal standpoint, the use of the fringe on the flag has no inherent or established symbolism. It has nothing to do with the jurisdiction of the court. It is purely a decorative addition to enhance the appearance of the flag.²⁵

¹⁶ *Vella v. McCammon*, 671 F.Supp. 1128, 1129 (S.D. Tex. 1987)(to think that a fringed flag adorning the courtroom somehow limits the court's jurisdiction is frivolous).

¹⁷ *Commonwealth v. Appel*, 652 A.2d 341, 343 (Pa. Super. 1994).

¹⁸ *Edison v. Burrage*, 113 F.App'x 860, 862 (10th Cir. 2004); *Koskela v. State*, 690 N.W. 2d 133, 134-135 (Minn. 2004)(fringe flag in courtroom claim is "wholly without merit").

¹⁹ *Ebert v. State*, 2007 WL 2141557, at *7 (Tex.App. 2007).

²⁰ *McCann v. Greenway*, 952 F.Supp. 647, 650-52 (W.D. Mo. 1997).

²¹ *Id.*

²² *Id.*

²³ 4 U.S.C. § 1 and 2.

²⁴ See, *McCann v. Greenway*, 952 F.Supp. 647, 650 (W.D. Mo. 1997).

²⁵ See, *State v. Hall*, 8 S.W. 3d 593, 604 n.6 (Tenn. 1999); *Ebert v. State*, 2007 WL 2141557, at *7 (Tex.App. 2007); *Schneider v. Schlaefel*, 975 F.Supp. 1160, 1163 (E.D. Wis. 1997)(the fringe on the flag is not of any legal significance affecting the jurisdiction of the court and all future claims based on this argument is frivolous and sanctionable.); *Sadlier v. Payne*, 974 F.Supp. 1411, 1414 (D.Utah 1997)(yellow fringe on flag does not convert state courtroom into a "foreign state or power."); and *United States v. Greenstreet*, 912 F.Supp. 224, 229 (N.D. Tex. 1996)(fringed flag does not limit federal district court's jurisdiction).

20. Consequently, Defendant's claims stemming from the yellow fringe on the flag must be dismissed because his factual predicate is incorrect as a matter of law. Even if the military does display United States flags surrounded by yellow fringe, the presence of yellow fringe does not necessarily turn every such flag into a flag of war.²⁶ Far from it. In flag manufacture a fringe is not considered to be part of the flag, and it is without heraldic or legal significance.²⁷

21. Jurisdiction is a matter of law, statute, and constitution, not a child's game wherein one's power is magnified or diminished by the display of some magic talisman.²⁸ The flag displayed in the courtroom did not affect the validity or legality of Defendant's plea and/or sentence.

22. Since Defendant's motion is procedurally barred, Defendant must meet one of the exceptions to overcome the bars to relief. 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."²⁹ The Defendant bears the burden of proving that he has been deprived of a "substantial constitutional right."³⁰ The Defendant has failed to provide any basis, and the record is devoid of, any evidence of manifest injustice. It is clear from Defendant's motion that Defendant's claim does not meet the high standard that the

²⁶ *McCann v. Greenway*, 952 F.Supp. 647,651 (W.D. Mo. 1997); See also, *Ebert v. State*, 2007 WL 2141557, at *8 (Tex.App. 2007)(a declaration that the president may authorize or allow the military to attach fringe to its flags is not the same as a declaration that any flag that is fringed is a military or admiralty flag or that the presence of the fringe alters the law applied by the court in which a fringed flag appears).

²⁷ *Id.*

²⁸ See, *McCann v. Greenway*, 952 F.Supp. 647, 651 (W.D. Mo. 1997).

²⁹ *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

³⁰ *Id.*

fundamental fairness exception requires. The Court does not find that the interests of justice require it to consider this otherwise procedurally barred claim for relief.

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

IT IS SO RECOMMENDED.

Commissioner Lynne M. Parker

oc: Prothonotary