IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	ID No. 1410000295
v.	)	
ZAKUON BINAIRD,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Submitted: April 8, 2016
Decided: April 26, 2016

Upon Defendant's Motion for Reargument:

DENIED.

John S. Taylor, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, 19801, Attorney for the State.

Natalie Woloshin, Esquire, Wilmington, Delaware, 19803, Attorney for Defendant.

MEDINILLA, J.

INTRODUCTION

On April 16, 2015, Zakuon Binaird ("Defendant") pleaded guilty to Drug Dealing in Heroin. On June 3, 2015, Defendant filed a Motion to Withdraw Guilty Plea, alleging that the State violated its disclosure obligations as required under *Brady v. Maryland*,[1] rendering Defendant's guilty plea involuntary; Defendant's request was denied. Defendant moves for reargument under Superior Court Civil Rule 59(e).[2] After consideration of the pleadings and oral arguments presented on April 4, 2016, for the reasons stated below, Defendant's Motion for Reargument is **DENIED**.

FACTUAL AND PROCEDURAL HISTORY

Before Defendant pleaded guilty to Drug Dealing in Heroin on April 16, 2015, the State provided exculpatory material related to the chemist who tested the drugs in Defendant's case. After the plea was entered, Defendant was made aware of two subsequent incidents, unrelated to his case, but involving the same chemist.

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[1] 373 U.S. 83 (1963). Defendant's claims are primarily grounded in *Brady v. Maryland*. However, by claiming that the State's failure to disclose subsequent unrelated instances of misconduct rendered Defendant's plea involuntary, Defendant's *Brady v. Maryland* claim seems to evolve into or combine with a *Brady v. United States* claim. *See Brady v. United States*, 397 U.S. 742 (1970). This confusion between the different *Brady* cases may be exacerbated by two other heavily cited cases in the instant matter, *Aricidiacono v. State*, 125 A.3d 677 (Del. 2015), and *Brown v. State*, 108 A.3d 1201 (Del. 2015) [hereinafter *Brown*]. *Aricidiacono* was decided under *Brady v. United States*, while *Brown* was decided under *Brady v. Maryland*. References to "*Brady*" in this decision are to *Brady v. Maryland*, unless otherwise specifically noted.

[2] There is no criminal rule of procedure governing motions for reargument. Where the Superior Court Criminal Rules do not provide for a particular procedure in a criminal case, the Superior Court Civil Rules shall govern. *See* Super. Ct. Crim. R. 57(d). Therefore, Superior Court Civil Rule 59(e) governs motions for reargument in criminal cases.

On June 3, 2015, Defendant, with the assistance of counsel, filed a Motion to Withdraw Guilty Plea under Superior Court Criminal Rules 32 and 61. This Court, in its Memorandum Opinion and Order issued January 22, 2016, denied Defendant's motion.

On January 29, 2016, Defendant filed this Motion for Reargument. The State filed its Response on February 5, 2016, and Defendant filed a Reply on February 17, 2016. Oral arguments were heard on April 4, 2016. Hours before the hearing, this Court also considered supplemental materials from Defense counsel related to allegations of the State's failure to disclose exculpatory evidence in an unrelated case. On April 8, 2016, Defense counsel submitted another supplemental letter, asking this Court to undertake a comprehensive review of all personnel records related to the chemist. Having considered the pleadings, oral arguments and supplemental submissions, under Rule 59(e), no additional review of documentation is required to rule on this pending motion. For the reasons below, this is the Court's ruling on Defendant's Motion for Reargument.

STANDARD OF REVIEW

A motion for reargument under Superior Court Civil Rule 59(e) permits the Court to reconsider "its findings of fact, conclusions of law, or judgment."[3]

[3] *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969). *See also Bd. of Managers of the Delaware Criminal Justice Info. Sys. v. Gannett Co.*, 2003 WL 1579170, at *1 (Del. Super. Jan. 17, 2003), *aff'd in part sub nom. Gannett Co. v. Bd. of Managers of the Delaware Criminal Justice Info. Sys.*, 840 A.2d 1232 (Del. 2003); *Cummings v. Jimmy's Grille*, 2000 WL 1211167, at *2 (Del. Super. Aug. 9, 2000).

"Delaware law places a heavy burden on a [party] seeking relief pursuant to Rule 59."[4] To prevail on a motion for reargument, the movant must demonstrate that the Court "overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision."[5] Further, "[a] motion for reargument is not a device for raising new arguments,"[6] nor is it "intended to rehash the arguments already decided by the court."[7] The moving party has the burden of demonstrating "newly discovered evidence, a change of law, or manifest injustice."[8]

ANALYSIS

In order to address the substance of Defendant's motion, this Court notes that Defendant relies on authority that conveniently interchanges the type of evidence he claims was not disclosed, from impeachment to exculpatory, regarding the two unrelated instances of misconduct. To the extent that it requires additional clarification, the information to which Defendant claims a right—unrelated instances of misconduct involving the same chemist—is impeachment evidence only.

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[4] *Kostyshyn v. Comm'rs of Bellefonte,* 2007 WL 1241875, at *1 (Del. Super. Apr. 27, 2007) (citation omitted).
[5] *Bd. of Managers of the Delaware Criminal Justice Info,* 2003 WL 1579170, at *1.
[6] *Id.*
[7] *Kennedy v. Invacare Corp.*, 2006 WL 488590, at *1 (Del. Super. Jan. 31, 2006).
[8] *E.I. du Pont de Nemours & Co. v. Admiral Ins. Co.*, 711 A.2d 45, 55 (Del. Super. Aug. 23, 1995) *on reconsideration,* 1996 WL 769627 (Del. Super. Dec. 24, 1996) (citations omitted).

Defendant argued that whether it was impeachment or exculpatory evidence, the State's failure to disclose required the same analysis regardless of whether Defendant was proceeding to trial or resolving his case by way of plea agreement. This Court disagreed. Pivotal to the prior ruling was the timing of the required disclosure, which differs depending on whether a defendant is proceeding to trial or instead chooses to enter a plea agreement; impeachment evidence does not fall under the *Brady* umbrella prior to a guilty plea.[9] Defendant argues that the Court misapprehended the facts and the law in its ruling. This Court addresses these arguments, in turn.

The Facts Were Not Misapprehended Such As Would Have Changed Outcome of the Underlying Decision

Because so much of the Defendant's motion focuses on allegations of misrepresentation against the State, this Court turns first to the crux of Defendant's claim, which begins with the following email exchange initiated by Defense counsel on April 6, 2015:

> Do you have the information about what the administration of the new OCME did with regard to the action of [the chemist]? The reports indicated that

[9] *Brown*, 108 A.3d at 1202 ("[a] defendant has no constitutional right to receive material impeachment evidence before deciding to plead guilty," and a defendant's "knowing, intelligent, and voluntary guilty plea waive[s] any right he ha[s] to test the strength of the State's evidence against him at trial, including the chain of custody of the drug evidence he claims he was entitled to receive."); *United States v. Ruiz*, 536 U.S. 622, 633 (2002) ("the Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant."). *See also United States v. Bagley*, 473 U.S. 667, 674–77 (1985); *Giglio v. United States*, 405 U.S. 150, 154–55 (1972).

> [supervisor] awaiting…response. I think I get the results of the internal investigation conducted.[10]

The State responded via email the next day as follows:

> I've turned over everything I have regarding the administrative actions taken by the new administration in relation to *this matter*.[11]

Based on this response, Defendant argued that his guilty plea was not voluntary because it was induced by some alleged misrepresentation on the part of the State. This Court disagreed. Defendant argues that this Court misapprehended facts that Defendant possessed all three instances of misconduct when the plea was entered. This argument fails.

This Court was fully aware when it rendered its Memorandum Opinion and Order that, at the time Defendant entered his guilty plea, he knew of the chemist's mishandling of evidence seized from his home. Defendant was in possession of the Corrective Action Request ("CAR") report detailing the disappearance and reappearance of one bag of heroin connected to Defendant's case, the policies and procedures associated with such mishandling, and the recommended remedial action[12]; Defendant was also in possession of an Employee Continued Training Evaluation form[13] detailing essentially the same information as the CAR report.[14]

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[10] Def.'s Mot. to Withdraw Guilty Plea, App. at A019.
[11] *Id.* at A020 (emphasis added).
[12] *Id.* at A006–07.
[13] *Id.* at A008–09.

Defendant was thus in possession of evidence regarding the chemist's misconduct in his case.

When Defendant entered his guilty plea, both he and his counsel were fully aware of the chemist's misconduct regarding his particular case that could have potentially held exculpatory value. As such, Defendant fails to demonstrate how the Court misapprehended the facts or law relative to allegations of misrepresentation by the State or the facts presented in this case.

Defendant argues, alternatively during oral arguments, that the impeachment evidence should have instead been considered exculpatory. Defendant asks for this Court to give this argument the same consideration under Rule 59(e). The basis of Defendant's argument is that a third unproduced CAR report from February 2016 labels the chemist's misconduct as a "systemic problem." Defendant asserts that the later incidents could be deemed "related" to the misconduct in Defendant's case. Specifically, he asks this Court to correct an error of law or prevent injustice by finding that the evidence was exculpatory (and thus should have been disclosed along with the instance of misconduct that did relate to Defendant's case). This argument fails. Even if Defendant's argument was timely under Rule 59, or was

[14] While the Memorandum Opinion and Order inadvertently referred to the CAR and Employee Continued Training Evaluation documents as "police reports," its accompanying description of the contents of those referenced documents clearly demonstrated this Court's understanding of what information Defendant was in possession of—documents detailing the misconduct as it related to his case—prior to entering his plea. Such semantics were not the basis of this Court's decision.

otherwise valid, the record shows that Defendant already had documentation that identified "systemic" problems with this chemist prior to taking the plea,[15] and any later reports with the same classification does not have the effect of connecting these reports to Defendant's case, such that nondisclosure of those reports would somehow cause Defendant's guilty plea to have been involuntarily entered.

Defendant next argues that this Court should not have barred his claim under Superior Court Criminal Rule 61(i)(3). Again, Defendant merely argues what it previously presented. In finding Defendant's claim procedurally barred under Rule 61(i)(3), as previously stated, this Court did not misapprehend the facts of this case such that it would have changed the outcome of the proceedings.[16] Further, under Rule 61(i)(3), Defendant has failed to show prejudice and did not provide any additional basis to change this Court's ruling on this issue.

The Court Did Not Overlook Controlling Precedent, Legal Principles or Misapprehend the Law Such As Would Have Changed Outcome of the Underlying Decision

Defendant argues that this Court misapplied the law when it analyzed Defendant's case in the context of *Aricidiacono v. State*[17] and *Brown v. State*.[18] Defendant also argues that this Court overlooked or failed to apply *O'Neil v.*

[15] *See id.* at A006–07. *See also id.* at A024–25, A051–52 (identical versions of A006–07).
[16] *See supra* note 14.
[17] 125 A.3d 677 (Del. 2015).
[18] 108 A.3d 1201 (Del. 2015).

State.[19] Defendant moves this Court to reconsider conclusions of law by reiterating the same arguments. This is not appropriate under Rule 59(e).

For purposes of clarification only, this Court found *O'Neil* inapplicable to Defendant's case, for *O'Neil* is about *exculpatory—not impeachment*—evidence; at issue here is undisclosed *impeachment* evidence. Defendant did not meet his burden of demonstrating a need to correct this Court's determination of the inapplicability of *O'Neil.*

As for *Aricidiacono*, the Delaware Supreme Court was confronted with a comparable situation to that of Defendant's. Forty-five (45) defendants claimed that they were unaware of the serious problems at the Office of the Chief Medical Examiner ("OCME") when they entered their respective guilty pleas involving the possession of illegal narcotics, and therefore, they should have their convictions vacated.[20] The Delaware Supreme Court found that despite the defendants' unawareness, the improprieties at OCME did not warrant the vacatur of their guilty pleas.

The Delaware Supreme Court made clear in *Aricidiacono* that once a defendant knowingly accepts responsibility by pleading guilty, he cannot "escape" this plea by making the claims now offered by Defendant:

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[19] 691 A.2d 50 (Del. 1997).
[20] *Aricidiacono*, 125 A.3d at 679.

> In prior decisions, we made clear that if a defendant knowingly pled guilty to a drug crime, he could not escape his plea by arguing that had he known that the OCME had problems, he would not have admitted to his criminal misconduct in possessing illegal narcotics. ... [W]e found that when defendants freely admitted their guilt by admitting that they possessed illegal narcotics, their lack of knowledge that the OCME's evidence-handling practices were seriously flawed and that some OCME employees had engaged in malfeasance, did not invalidate their pleas.[21]

Just like the defendants in *Aricidiacono*,[22] Defendant does not claim that he is actually innocent or that the misconduct by the chemist caused the drugs to falsely test positive for heroin. Also, as in *Aricidiacono*, where the mishandling of drug evidence within OCME did not warrant vacatur of guilty pleas, Defendant does not claim he gave a false admission during his guilty plea colloquy. This Court finds that Defendant fails to meet his burden of demonstrating under Rule 59 how this Court misapprehended the law under *Aricidiacono*.

Defendant also fails to demonstrate how the Court misapprehended the law based on its reliance under *Brown v. State*.[23] Defendant suggests that *United States v. Ruiz*[24] is not applicable but, again, merely restyles the previously made—and

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[21] *Id.* at 678–79 (internal citations omitted).
[22] *See id.* at 679 ("not one of the defendants argues that she was in fact not in possession of illegal narcotics and that her plea was false.").
[23] 108 A.3d 1201 (Del. 2015). In Defendant's Motion for Reargument, Defendant claims this Court incorrectly analyzed his case in the context of *Aricidiacono* and *Brown v. State*, but incorrectly cites to *Patrick L. Brown v. State*, 119 A.3d 42, 2015 WL 3372271 (Del. 2015), *reargument denied* (Aug. 18, 2015) (TABLE). Def.'s Mot. for Rearg. at *4 n.14. In its Memorandum Opinion and Order, this Court analyzed *Ira Brown v. State*, 108 A.3d 1201 (Del. 2015).
[24] 536 U.S. 622 (2002).

rejected—argument. In *Brown*, the court interpreted *Ruiz* and found the defendant's plea "knowingly, voluntarily, and intelligently" entered and the problems at OCME as providing no basis to find otherwise.[25] The court noted that "[b]y pleading guilty, Brown gave up his right to trial and his right to learn of any impeachment evidence. … *Ruiz* prevents him from reopening his case to make claims that do not address his guilt, and involve impeachment evidence that would only be relevant at trial."[26]

In sum, *Ruiz*, as interpreted by *Brown*, plainly prevents the assertions Defendant offers here: Defendant has admitted his guilt, and because the undisclosed and unrelated instances of the chemist's misconduct did not go to Defendant's actual innocence, this Court determined he could not use it as grounds to withdraw his guilty plea.

CONCLUSION

This Court finds that Defendant moves it to reconsider conclusions of law by rehashing arguments previously presented, and raising new arguments not properly before this Court, under Rule 59(e). Defendant fails to meet his heavy burden of demonstrating newly discovered evidence, a change or error of law, or manifest injustice. Specifically, Defendant fails to demonstrate that this Court overlooked

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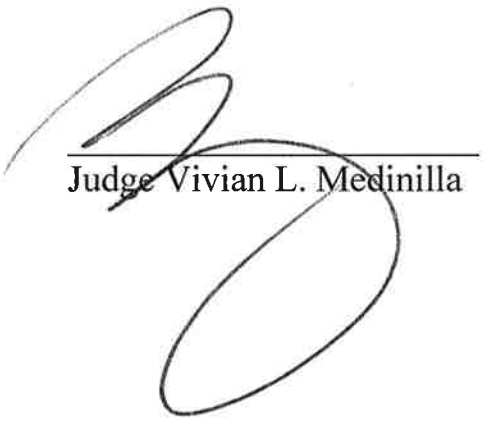
[25] 108 A.3d at 1206.

[26] *Id.* (internal citations omitted). *See also Ruiz*, 536 U.S. at 629 ("impeachment information is special in relation to the *fairness of a trial,* not in respect to whether a plea is *voluntary* ('knowing,' 'intelligent,' and 'sufficient[ly] aware).").

controlling precedent or legal principles before denying Defendant's Motion to Withdraw Guilty Plea. Moreover, this Court did not misapprehend the law or facts such as would change the outcome of the underlying decision. Defendant's Motion for Reargument is, therefore, **DENIED.**

IT IS SO ORDERED.



Judge Vivian L. Medinilla

oc: Prothonotary