

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE, )  
 )  
 Plaintiff, )  
 )  
 v. ) Cr. ID No. 0611011662  
 )  
 RYAN D. SINCLAIR, )  
 )  
 Defendant. )

Submitted: December 12, 2016  
Decided: January 10, 2017

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

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

Ryan D. Sinclair, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se*.

PARKER, Commissioner

This 10th day of January 2017, upon consideration of Defendant's Third Motion for Postconviction Relief, it appears to the Court that:

**BACKGROUND AND PROCEDURAL HISTORY**

1. On October 16, 2007, Defendant Ryan D. Sinclair pled guilty to the charges of Murder in the Second Degree (a lesser included offense of first degree murder), and Possession of a Firearm During the Commission of a Felony ("PFDCF"). As part of the plea agreement, the parties agreed to jointly recommend a sentence of 20 years at Level V.<sup>1</sup>

2. On February 1, 2008, Defendant was sentenced to 20 years of unsuspended Level V time, followed by decreasing levels of probation.

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

4. On May 20, 2008, Defendant filed a motion for modification of sentence.<sup>2</sup> In that motion, Defendant made no representation that he felt he was not competent to enter into his plea, that his counsel was ineffective, or that he was not guilty of the crimes to which he pled guilty. By Letter Order dated July 24, 2008, the Superior Court denied Defendant's motion for modification of sentence.<sup>3</sup> The court, in denying the motion, advised Defendant that it had considered Defendant's lack of a prior criminal record as well as his mental health issues when sentencing Defendant.<sup>4</sup>

5. Over four years after his sentencing, on May 18, 2012, Defendant filed his first Rule 61 motion for postconviction relief.<sup>5</sup> In that motion, Defendant contended that he was not mentally competent to enter into his plea, that his counsel provided ineffective

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<sup>1</sup> See, Plea Agreement dated October 16, 2007, Superior Court Docket No. 29.

<sup>2</sup> Superior Court Docket No. 42.

<sup>3</sup> Superior Court Docket No. 43.

<sup>4</sup> Superior Court Docket No. 43.

<sup>5</sup> Superior Court Docket No. 44.

assistance, that counsel was ineffective in failing to pursue an Extreme Emotional Distress defense because the victim was beating him with a deadly weapon, and that the State falsely prosecuted him because the murder was not his fault.<sup>6</sup>

6. On June 12, 2012, a Superior Court Commissioner issued his Report and Recommendation recommending that the Rule 61 postconviction motion be denied.<sup>7</sup> The Commissioner recommended that Defendant's Rule 61 motion be dismissed since it was procedurally barred on the grounds that it was untimely and that Defendant's claims should have been raised in prior proceedings and/or were otherwise procedurally barred.<sup>8</sup>

7. The Commissioner further noted that the record reflected that Defendant had entered into his plea knowingly, intelligently and voluntarily.<sup>9</sup>

8. By Order dated July 31, 2012, the Superior Court adopted the Commissioner's Report and Recommendation and denied Defendant's Rule 61 postconviction motion.<sup>10</sup>

9. On January 14, 2013, Defendant filed another motion for modification of sentence.<sup>11</sup> In that motion, Defendant again raised his Extreme Emotional Distress defense, that he was mentally ill, and that he should have been convicted of manslaughter not murder in the second degree.<sup>12</sup> By Order dated April 30, 2013, the Superior Court denied the motion.<sup>13</sup> The court explained that the sentence imposed was fair and appropriate and a modification was not warranted.<sup>14</sup>

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<sup>6</sup> Superior Court Docket No. 44.

<sup>7</sup> Superior Court Docket No. 47.

<sup>8</sup> Superior Court Docket No. 47.

<sup>9</sup> Superior Court Docket No. 47, at pg. 7; *See also*, Truth-in-Sentencing Guilty Plea Form dated October 16, 2007.

<sup>10</sup> *State v. Sinclair*, 2012 WL 3535865 (Del.Super.).

<sup>11</sup> Superior Court Docket No. 49.

<sup>12</sup> *See*, Superior Court Docket No. 49.

<sup>13</sup> Superior Court Docket No. 50.

<sup>14</sup> Superior Court Docket No. 50.

10. On May 2, 2016, filed his second Rule 61 motion for postconviction relief. In that motion Defendant raised and re-raised claims about his Extreme Emotional Distress which should have allegedly resulted in a lesser charge, “his mental anguish/illness”, and claims that his counsel was ineffective at the investigation and plea stages.<sup>15</sup>

11. On August 11, 2016, the undersigned Commissioner issued her Report and Recommendation recommending that Defendant’s second Rule 61 motion be summarily dismissed.<sup>16</sup> The Commissioner ruled that Defendant’s motion failed to meet the pleading requirements necessary for proceeding with a second Rule 61 motion.<sup>17</sup> Specifically, Defendant failed to plead with particularity that any new evidence existed that created a strong inference that he was actually innocent of the charge nor did he contend that there was a new rule of law that would render his conviction invalid.<sup>18</sup> The Commissioner also concluded that the motion was time-barred (filed over 8 years after the final order of conviction), waived (all the claims stemmed from alleged errors, deficiencies or defects occurring prior to the entry of plea and were waived at the time of the entry of the voluntary plea), and otherwise procedurally barred.<sup>19</sup>

12. On September 22, 2016, the Superior Court adopted the Commissioner’s Report and Recommendation and denied Defendant’s second Rule 61 postconviction motion.<sup>20</sup>

### **DEFENDANT’S THIRD RULE 61 MOTION**

13. On December 8, 2016, Defendant filed his third Rule 61 postconviction motion.

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<sup>15</sup> See, Superior Court Docket No. 56.

<sup>16</sup> *State v. Sinclair*, 2016 WL 4368174 (Del.Super., August 11, 2016)

<sup>17</sup> Super.Ct.Crim.R. 61(d)(2)& (5); and Rule 61(i) (effective June 4, 2014).

<sup>18</sup> *State v. Sinclair*, 2016 WL 4368174 (Del.Super., August 11, 2016)

<sup>19</sup> *Id.*

<sup>20</sup> Superior Court Docket No. 63.

In the subject motion, he claims that the death of the victim was justified because Defendant was protecting others and therefore the death was not his fault, that he was justified in using force for his self-protection and that the death should not be deemed his fault, and that his mental illness or psychiatric disorder should have been a mitigating factor or should have resulted in him being deemed “not guilty by reason of insanity.”

14. As previously addressed in the Commissioner’s Report and Recommendation of August 11, 2016 recommending the denial of Defendant’s second Rule 61 motion, in second or subsequent postconviction motions, the motion shall be summarily dismissed unless the defendant establishes: 1) that *new* evidence exists that creates a strong inference that he is actually innocent of the charge for which he was convicted, or 2) the existence of a *new* rule of constitutional law made retroactive to cases on collateral review rendered his convictions invalid.<sup>21</sup> 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.<sup>22</sup>

15. Like Defendant’s second Rule 61 motion, the subject motion, his third Rule 61 motion, should be summarily dismissed. Defendant has not pled with particularity that any *new* evidence exists that creates a strong inference that he is actually innocent of the charge for which he was convicted nor that there is a new rule of law that would render his conviction invalid.

16. Defendant does not raise anything new or recently discovered. All of Defendant’s claims stem from facts known to him at the time of his plea in 2007 and sentencing in 2008. Defendant does not raise any new evidence, let alone new evidence that would

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<sup>21</sup> Super.Ct.Crim.R. 61(d)(2)& (5); and Rule 61(i) (effective June 4, 2014).

<sup>22</sup> Super.Ct.Crim.R. 61(d)(5).

create a strong inference that he is actually innocent. Moreover, Defendant does not claim the existence of any new rule of constitutional law that would be applicable to his case. As such, Defendant has failed to meet the pleading requirements allowing him to proceed with his Rule 61 motion. In accordance with the mandates of Rule 61, Defendant's motion should be summarily dismissed.<sup>23</sup>

17. Again, like his prior Rule 61 motions, all of the claims raised in this third Rule 61 motion were waived when Defendant entered into his plea. As previously noted in the Commissioner's Report and Recommendation of June 12, 2012 in Defendant's first Rule 61 motion, and in the Commissioner's Report and Recommendation of August 11, 2016 in Defendant's second Rule 61 motion, Defendant waived his right to challenge any alleged errors, deficiencies or defects occurring prior to the entry of his plea, even those of constitutional proportions.<sup>24</sup>

18. Defendant stated at the time of the plea that he was not threatened or forced to take the plea, that he was freely and voluntarily taking the plea, and that he was satisfied with his attorney's representation of him.<sup>25</sup> Defendant entered into his plea knowingly, intelligently and voluntarily and all of the claims presented herein stem from allegations of errors, deficiencies or defects occurring prior to the entry of the plea, and were all waived at the time of the entry of the voluntary guilty plea.<sup>26</sup>

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<sup>23</sup> Super.Ct.Crim.R. 61(d)(2) & 5; and Rule 61(i).

<sup>24</sup> Superior Court Docket No. 47, at pg. 7; See also, *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).

<sup>25</sup> Superior Court Docket No. 47, at pg. 7; See also, Truth-in-Sentencing Guilty Plea Form dated October 16, 2007.

<sup>26</sup> See, *Mills v. State*, 2016 WL 97494, at \*3 (Del.).

19. Like his first two Rule 61 motions, this motion also falls short of other procedural requirements that must be met. If a procedural bar exists, then the claim is barred and the court should not consider the merits of the claim.<sup>27</sup>

20. Rule 61 (i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;<sup>28</sup> (2) any basis for relief must be asserted in the first timely filed motion for postconviction relief absent exceptional circumstances (ie. discovery of new evidence or new rule of constitutional law) warranting a subsequent motion being filed; (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 however do not apply to a claim that the court lacked jurisdiction or to a claim that new evidence exists that movant is actually innocent or that there is a new law, made retroactive, that would render the conviction invalid.<sup>29</sup>

21. Like the first two Rule 61 motions, the subject motion is time-barred. The final order of conviction was in March 2008<sup>30</sup>, and this motion was filed in December 2016, over 8 years later.<sup>31</sup> This motion was filed well outside the applicable one year limit. Defendant's claims, at this late date, are time-barred.

22. As previously discussed, Rule 61(i)(2) further precludes this court's consideration of Defendant's motion since Defendant has not satisfied the pleading requirements for proceeding with this motion. Defendant has not established that *new* evidence exists

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<sup>27</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>28</sup> Super.Ct.Crim.R. 61(i)(1).

<sup>29</sup> Super.Ct.Crim.R. 61 (effective June 4, 2014).

<sup>30</sup> Super.Ct.Crim.R. 61(m)(1).

<sup>31</sup> Super.Ct.Crim.R. 61(i)(1).

creating a strong inference of Defendant's actual innocence or the existence of a *new* rule of constitutional law.

23. Rule 61(i)(3) also prevents this court from considering Defendant's claims at this late date, since he did not raise them at the plea stage, sentencing stage, on direct appeal or in a timely filed Rule 61 motion. Defendant was aware of, had time to, and the opportunity to raise all of the claims presented herein in a timely filed motion. All of Defendant's claims stem from facts known to Defendant at the time of his plea and at the time of sentencing. Defendant does not raise anything new or recently discovered.

24. Finally, Rule 61(i)(4) appears to also preclude Defendant's claims raised herein to the extent those claims have already been raised and adjudicated in some fashion or other in Defendant's prior untimely filed postconviction relief motions and/or on his motions for modification of sentence. Claims that have already been raised and resolved in some fashion cannot be re-stated, refined and re-raised in order to again seek review.<sup>32</sup>

25. As to the Defendant's first two claims, that he was justified in the shooting death of the victim, a similar claim was raised in Defendant's first Rule 61 motion in which he claimed that the murder was not his fault. As to his third claim that his mental illness should be a mitigating factor or he should have been deemed "not guilty by reason of insanity", a similar claim was raised in Defendant's first Rule 61 motion in which he contended that he was not mentally competent to enter into his plea, in his January 14, 2013 motion for modification of sentence, and in his second Rule 61 motion in which he claimed his mental anguish/illness should be a mitigating factor to the charges for which he pled guilty. Accordingly, to the extent the claims raised herein were previously raised

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<sup>32</sup> *Johnson v. State*, 1992 WL 183069, at \*1 (Del.); *Duhadaway v. State*, 877 A.2d 52 (Del. 2005).




and resolved in some fashion, the claims are also procedurally barred as previously adjudicated.

26. Defendant has not established any prejudice to his rights and/or cause for relief. Defendant had time and opportunity to raise any issue raised herein in a timely filed postconviction motion. There is no just reason for Defendant's over 8 year delay in doing so. Having been provided with a full and fair opportunity to present any issue desired to be raised in a timely filed motion, any attempt at this late juncture to raise, re-raise or recouch a claim is procedurally barred.

27. Defendant has failed to meet the pleading requirements for proceeding with the subject motion and, therefore, the motion should be summarily dismissed. Defendant's motion is also time barred, waived, and otherwise procedurally barred.

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

**IT IS SO RECOMMENDED.**



Commissioner Lynne M. Parker

oc: Prothonotary