

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
) Plaintiff,)
)
)
) v.) Cr. ID No. 90004868di
)
 RAYMOND DORMAN,)
)
) Defendant.)
)

Submitted: April 10, 2017
Decided: May 22, 2017

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

Joseph Grubb, Esquire, Deputy Attorney General, Department of Justice, Wilmington,
Delaware, Attorney for the State.

Raymond Dorman, New Jersey State Prison, Trenton, New Jersey, *pro se*.

PARKER, Commissioner

This 22nd day of May 2017, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND AND PROCEDURAL HISTORY

1. In October 1990, following a Superior Court jury trial, Defendant Raymond Dorman was convicted of two counts of assault in a detention facility. On December 14, 1990, Dorman was declared a habitual offender and sentenced to life imprisonment plus twenty years.¹

2. On direct appeal, on January 27, 1992, the Delaware Supreme Court affirmed Dorman's convictions and sentence.²

3. On November 23, 1992, Dorman filed a Rule 61 motion for postconviction relief asserting a number of grounds for relief. In that motion, Dorman raised claims as to improper sentencing, prosecutorial misconduct, and other alleged trial court errors.³

4. On January 11, 1993, the Delaware Superior Court denied Dorman's motion for postconviction relief concluding that his claims were either procedurally barred or meritless.⁴ Dorman appealed, and on April 7, 1993, the Delaware Supreme Court affirmed the decision of the Delaware Superior Court.⁵

¹ Dorman is serving his Delaware life prison term in New Jersey. Dorman's habitual offender status stemmed from five prior convictions for assault in a detention facility and promoting prison contraband. He was first convicted of promoting prison contraband on April 7, 1982. He was next convicted of assault in a detention facility on September 23, 1983. His third conviction, assault in a detention facility, was on November 15, 1985. His fourth conviction on February 10-13, 1987, included charges of assault in a detention facility, promoting prison contraband, possession of deadly weapon during the commission of a felony, and other weapons charges. His fifth conviction on October 15, 1990 was for assault in a detention facility. See, Superior Court Docket No. 16- Motion to Declare Defendant a Habitual Offender.

² *Dorman v. State*, 1992 WL 53399 (Del.).

³ See, *State v. Dorman*, 1993 WL 1610478 (Del.Super.).

⁴ *State v. Dorman*, 1993 WL 1610478 (Del.Super.).

⁵ *Dorman v. State*, 1993 WL 132980 (Del.).

5. On May 23, 1996, Dorman filed another motion for postconviction relief.⁶ In that motion, Dorman raised claims of ineffectiveness of counsel as well as other claims. On May 29, 1996, the court sent a notice of non-compliance that the Rule 61 motion filed by Dorman was illegible and was not in conformance with the rule requirements. Dorman was instructed to make the necessary corrections before resubmitting the motion.⁷

6. Almost 11 years has elapsed since Dorman's second Rule 61 motion was returned to him for non-compliance, and Dorman never resubmitted his non-conforming Rule 61 motion.

7. On April 5, 2017, Dorman filed the subject Rule 61 motion.

DEFENDANT'S RULE 61 MOTION

8. In the subject Rule 61 motion, Dorman again claims improper sentencing, improper indicted charges, and counsel indifference/ineffectiveness.

9. 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.⁸ 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.⁹

10. Defendant's subject motion, his third Rule 61 motion, should be summarily dismissed. Defendant has not pled with particularity that any new evidence exists that

⁶ See, Superior Court Docket No. 43.

⁷ Superior Court Docket No. 43.

⁸ Super.Ct.Crim.R. 61(d)(2)& (5); and Rule 61(i) (effective June 4, 2014).

⁹ Super.Ct.Crim.R. 61(d)(5).

creates a strong inference that he is actually innocent of the charges for which he was convicted or that there is a new rule of law that would render his conviction invalid.

11. Defendant does not raise anything new or recently discovered. All of Dorman's claims stem from facts known to him at the time of his trial and sentencing in 1990. Moreover, Dorman does not claim the existence of any new rule of constitutional law that would be applicable to his case. As such, Dorman 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.¹⁰

12. Dorman's 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.¹¹

13. Rule 61 (i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;¹² (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.¹³

¹⁰ Super.Ct.Crim.R. 61(d)(2) & 5; and Rule 61(i).

¹¹ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹² Super.Ct.Crim.R. 61(i)(1).

¹³ Super.Ct.Crim.R. 61 (effective June 4, 2014).

14. In the subject action, Defendant's motion is time-barred. The final order of conviction was in 1992,¹⁴ and this motion was filed in April 2017, over 25 years later.¹⁵ This motion was filed well outside the applicable one year limit. Defendant's claims, at this late date, are time-barred.

15. As previously discussed, Rule 61(i)(2) further precludes this court's consideration of Dorman's motion since he has not satisfied the pleading requirements for proceeding with this motion. Dorman has not established that new evidence exists creating a strong inference of Defendant's actual innocence or the existence of a new rule of constitutional law made retroactive to this case that would render his convictions invalid.

16. Rule 61(i)(4) also precludes Dorman's claims raised herein since some of the claims were already raised and adjudicated in some fashion on Defendant's direct appeal, or in his previously filed Rule 61 motion. Those claims previously raised are now procedurally barred as previously adjudicated.

17. Rule 61(i)(3) also prevents this court from considering any claims raised by Defendant not previously raised. Defendant's trial and sentencing were held in 1990. It is now almost 27 years later. 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 his trial and sentencing in 1990. Defendant does not raise anything new or recently discovered.

18. 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 on direct appeal and/or in a timely filed postconviction motion. There is no just reason for Defendant's

¹⁴ Super.Ct.Crim.R. 61(m)(2).


¹⁵ Super.Ct.Crim.R. 61(i)(1).

over 25 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 re-couch a claim is procedurally barred.

19. 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 and otherwise procedurally barred.

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

IT IS SO RECOMMENDED.



Commissioner Lynne M. Parker

oc: Prothonotary
Sheryl Rush-Milstead, Esquire