IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	ID# 86010323 DI
	)	
RAYMOND DORMAN,	)	
	)	
Defendant.	)	
	)	

ORDER

Defendant, Raymond Dorman, was found guilty by a jury of two counts of assault in a detention facility, promoting prison contraband, and three related weapons offenses in May 1987. He was sentenced to 19 years in prison.[1] Defendant appealed his conviction and the Supreme Court dismissed the appeal for want of prosecution.[2] Defendant's first motion for postconviction relief was denied by this court on June 7, 1990 and affirmed by the Supreme Court on August 5, 1991. Defendant subsequently filed a second motion for postconviction relief. This court denied the motion on October 20, 1992 and the Supreme Court affirmed the decision on February 24, 1993. Defendant now comes forward with a third motion for postconviction relief which he filed on May 30, 2012. He

[1] Even though more than 19 years have transpired since Defendant's conviction, he is still serving his sentence for these crimes because he had to complete time on another sentence before he started serving this sentence. According he may still seek relief under Rule 61. *See* Superior Court Rule of Criminal Procedure 61(a)(1).

[2] *Dorman v. State*, 560 A.2d 489 (Del. 1989) (TABLE).

claims "Appellate Counsel on direct appeal was ineffective by failing to file a timely merits brief on petitioners behalf which allowed the Supreme Court Judges to dismiss his appeal for want of prosecution."[3]

In considering a Rule 61 motion, the court must first look to procedural requirements of the rule.[4] Defendant's motion is barred under two procedural bars and does not meet the exceptions. First, Defendant's motion is barred because it is untimely. A motion for postconviction relief for 1987 convictions must be filed within three years[5] after a conviction becomes final or, in the case of newly recognized rights, within one year of the right first being recognized by the Delaware Supreme Court or United States Supreme Court.[6] The motion in this case was filed more than twenty three years after the conviction became final and Defendant does not argue a newly recognized right applies to his claims.

Second, Defendant's motion is barred because it is repetitive. Repetitive postconviction relief motions are barred unless consideration "is warranted in the interest of justice."[7] The pending motion is Defendant's third motion for postconviction relief. After reviewing the motion, the court finds consideration is not warranted in the interest of justice.

---

[3] Defendant's Separate memorandum in Support of Postconviction Relief Petition Per. Rule 61(i)(5), at 1.
[4] *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).
[5] The rule was later changed and now allows one year. *See* Superior Court Rule of Criminal Procedure 61(i)(1).
[6] *Id.*
[7] Superior Court Rule of Criminal Procedure 61(i)(2).

Defendant seeks to invoke an exception to the procedural bars. He claims there is "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*."[8] This exception does not apply because the exception only applies proceedings leading to the judgment of conviction. In his third motion for postconviction relief, Defendant only argues that his appellate counsel was ineffective.[9] Appellate counsel could not have affected the fairness of the proceeding leading to the judgment of conviction, because his role does not begin until after the judgment of conviction. Therefore, this exception to the procedural bars does not apply. Defendant's motion is **DENIED** as procedurally barred.

Assuming arguendo that a challenge to appellate counsel's effectiveness could be "a colorable claim that there was a miscarriage of justice . . . leading to the judgment of conviction,"[10] the court finds Defendant's claims are meritless and deserving of summary dismissal. Defendant's direct appeal was dismissed by the Supreme Court for want of prosecution, which Defendant now claims is the fault of his former appellate counsel. Defendant's former appellate counsel could not file a brief in the Supreme Court until he had reviewed the trial transcripts. However, Defendant "had forwarded the trial transcripts to an

---

[8] Superior Court Rule Criminal of Procedure 61(i)(5) (emphasis added).
[9] Defendant cannot challenge his trial counsel as being ineffective because he represented himself at trial. *Dorman v. State*, 599 A.2d 412 (Del. 1991) (TABLE).
[10] Superior Court Rule Criminal of Procedure 61(i)(5).

undisclosed third person in Marion, Illinois."[11] Defendant was given several extensions by the court to return the transcripts to his attorney and later the court issued an order to show cause why he had not. Defendant wrote to the court, "I have given my say regarding the papers so either it be accepted or don't because the documents *will not* arrive until my people sees fit to get them there."[12] The court determined:

> it is clear that defendant Dorman has had more than adequate time to review the transcripts for the original purpose for which he requested them and they were provided; that he has failed to comply with the directions of his attorney and the Order of this Court for return of the transcript to his attorney; that defendant's failure to do so is willful and deliberate and constitutes a continuing act of defiance of this Court and interference with the administration of justice and the prosecution of appeals with effect.[13]

The Supreme Court dismissed his appeal.

Rule 61 permits summary dismissal "[i]f 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."[14] Like many defendants, Mr. Dorman seeks to revive a barred argument by attempting to couch it in terms of a deprivation of the right to effective assistance of counsel. But simple incantation of the Sixth Amendment does not transform an alleged error into a constitutional issue. One is reminded of a saying attributed to Abraham Lincoln: "If you call a tail a leg, how many legs

---

[11] *Dorman v. State*, 1989 WL 47252 at *1, 560 A.2d 489 (Del. 1989) (TABLE). Perhaps not coincidentally, Marion is the home of a federal prison which, at the time, was a maximum security facility.
[12] *Id.* at *1 (emphasis in original).
[13] *Id.* at *2.
[14] Superior Court Rule of Criminal Procedure 61(d)(4).

does a dog have? Four, calling a tail a leg doesn't make it a leg." In the instant case the Supreme Court found in 1989 that Defendant and not his attorney was at fault for the dismissal of his direct appeal. The record of Defendant's case plainly shows he is not entitled to relief, and therefore assuming his claim is not procedurally barred, it is **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

Dated: August 10, 2012

_____
Judge John A. Parkins, Jr.

oc: Prothonotary

cc: Raymond Dorman, #245815, New Jersey State Prison, Trenton, NJ
Robert J. O'Neill Jr., Esquire, Department of Justice, Wilmington, DE