

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

August 9, 2007

William L. Gaines
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: Defendant ID No. 83002841DI (R-1)
Postconviction Relief Rule 61 as to S83-04-0034
(Murder in the First Degree)

Dear Mr. Gaines:

On August 1, 2007, the Court received your Motion for Postconviction Relief. After studying both your Motion and the Court's file, it is denied.

On January 3, 1984, you pled guilty to murder in the first degree and to possession of a deadly weapon during the commission of a felony. Judge Tease presided over that hearing and he ordered a presentence investigation.

On May 25, 1984, Judge Tease sentenced you to be imprisoned for the balance of your natural life as to the murder in the first degree charge; and, as to the possession of a deadly weapon during the commission of a felony, you received a sentence of ten (10) years.

There has been no further action in your file pertinent to your conviction, with the exception of your Motion for Postconviction Relief filed this month.

The basis for your Motion for Postconviction Relief is grounded in the recent case law as to felony murder and whether or not the killing was in furtherance of the commission of a felony. You cite *Kirk v. State*, 889 A.2d 283 (Del. 2005) and *Chao v. State*, 2007 WL 1774963 (Del. Supr. Ct. 06/20/2007).

Your problem is that you were not charged with felony murder. You were charged with intentionally causing the death of Wayne C. Ewell by shooting him with a .357 magnum revolver at close range. I enclose a copy of the indictment which is the basis for your guilty plea. Therefore, any references to felony murder are irrelevant.

Defendant's Motion for Postconviction Relief is denied as there is no factual basis and is deemed frivolous.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj

Enclosure

cc: Prothonotary
Department of Justice