

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID No. 9704012213
)	
CARL D. CRAWFORD,)	
)	
Defendant.)	
)	

Submitted: July 30, 2012
Decided: August 2, 2012

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

Kathleen Jennings, State Prosecutor, Department of Justice, Wilmington, Delaware,
Attorney for the State.

Carl D. Crawford, Federal Correctional Institution, Otisville, New York, *pro se*.

PARKER, Commissioner

This 2nd day of August 2012, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. On April 30, 2001, Defendant Carl D. Crawford pled guilty to two misdemeanor charges: Conspiracy Third Degree and Forgery Third Degree.¹ On that same date, Defendant was sentenced to a total of two years at Level V, suspended for two years at Level II.²

2. Defendant Crawford did not file a direct appeal from his guilty plea or sentence.

3. On July 7, 2005, Defendant Crawford was discharged from probation.³

4. On July 20, 2012, after Defendant Crawford had completed his sentence, he filed a Motion for Postconviction Relief. In the subject motion, Defendant contends that his guilty plea was unconstitutional because he was not informed by the sentencing court that his guilty plea could enhance a subsequent federal sentence. Defendant also contends that his counsel was ineffective for failing to advise him that his guilty plea could be used against him in a later proceeding.

5. It appears that on or about January 2003, Defendant was arrested and subsequently convicted of a drug and a firearm offense in the United States District Court for the Eastern District of Pennsylvania.⁴ It appears that Defendant was sentenced in federal court to 63 months for the firearm conviction and 240 months for the drug conviction.⁵ The enhancement of Defendant's sentences in federal court appears to have

¹ See, 11 *Del.C.* § 861 (forgery in the third degree is a Class A misdemeanor); 11 *Del. C.* § 512 (conspiracy in the third degree is Class A misdemeanor); See, Plea Agreement dated April 30, 2001.

² See, Superior Court Docket Nos. 19, 22, 23; Plea Agreement dated April 30, 2001.

³ Superior Court Docket No. 26.

⁴ See, *Crawford v. U.S.*, 2010 WL 3910102 (E.D. Pa. 2010); *U.S. v. Crawford*, 2008 WL 1748248 (3rd Cir.), *cert. den.*, 555 U.S. 859 (2008).

⁵ *Id.*

stemmed from a prior 1993 drug felony conviction.⁶ The 1993 drug conviction did not occur in the State of Delaware. It appears that the 1993 drug conviction arose in the Commonwealth of Pennsylvania.⁷ Apparently, Defendant's 1993 drug conviction classified Defendant as a convicted felon. As a convicted felon, Defendant was not permitted to own a firearm. The fact that Defendant was a convicted felon and therefore not permitted to own a firearm was the basis for his firearm conviction following his 2003 arrest. Moreover, the 1993 drug conviction *alone* was also the basis for Defendant's federal sentence enhancement on the drug conviction, which apparently required the mandatory sentence of 240 months for the drug conviction that Defendant received.⁸

6. When considering a Rule 61 motion for postconviction relief, if it plainly appears from the motion 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

7. The subject motion for postconviction relief should be summarily dismissed for each of the reasons discussed below.

8. First, the factual predicate upon which Defendant bases his motion is incorrect. In the subject Delaware proceeding, Defendant pled guilty to two misdemeanors. It appears that it was, in fact, his 1993 drug felony conviction, which did not occur in Delaware, which resulted in the enhancement of his subsequent federal sentence, not his 2001 misdemeanor convictions in the subject case. It does not appear that the subject

⁶ *Id.*

⁷ See, Pretrial Service Report of May 20, 1997.

⁸ See, *Crawford v. U.S.*, 2010 WL 3910102, at *10 (E.D. Pa. 2010) (the 1993 felony drug conviction alone would have required a mandatory sentence of 20 years); *U.S. v. Crawford*, 2008 WL 1748248 (3rd Cir.) (the government relied on Crawford's 1993 felony drug conviction to establish he was a convicted felon and the jury found that Crawford committed the 1993 felony upon which the District Court relied in sentencing Crawford), *cert. den.*, 555 U.S. 859 (2008).

⁹ Super.Ct.Crim.R. 61(d)(4).

2001 misdemeanor convictions impacted his subsequent federal sentence in any respect. For this reason, in and of itself, Defendant's postconviction relief motion in the subject action should be dismissed.

9. Second, Defendant lacks standing to pursue a motion for postconviction relief because he has completed his sentence in this case and thus is no longer "in custody or subject to future custody" under the sentence for which postconviction relief is being sought.¹⁰ When a defendant is not in custody or subject to future custody for the underlying offense or challenged sentence, the defendant lacks standing to seek Rule 61 relief and the Rule 61 motion should be summarily dismissed without reaching the substantive claims.¹¹ Defendant lacks standing to seek Rule 61 relief in this case because he has been discharged from his sentence for which postconviction relief is being sought and, therefore, his motion should be summarily dismissed.

10. Third, even if Defendant does not lack standing to seek Rule 61 relief in this case, Defendant's motion is procedurally barred. When a procedural bar exists, then the claim is barred, and the Court should not consider the merits of the postconviction claim.¹²

11. The subject motion is procedurally barred pursuant to Superior Court Criminal Rule 61(i). Rule 61(i)(1) applies because Defendant filed this motion more than three years after his final order of conviction.¹³ The motion is therefore untimely. Defendant's

¹⁰ Super.Ct.Crim.R. 61(a)(1); *Ruiz v. State*, 2008 WL 1961187, at *2 (Del. 2008)(a person loses standing to seek postconviction relief under Rule 61 where the defendant is not in custody or subject to future custody for the underlying offense or challenged sentence.); *State v. Hinson*, 2006 WL 337031, at *2 (Del.Super.)(“All courts in Delaware that have considered whether postconviction relief under Rule 61 is potentially available to a person who is not ‘in custody or subject to future custody’ for the challenged sentence have agreed that such relief under Rule 61 is not available.”)

¹¹ *Id.*

¹² *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹³ Super.Ct.Crim.R. 61(i)(1). If the final order of conviction occurred before July 1, 2005, the motion must be filed within three years. If the final order of conviction occurred on or after July 1, 2005, the motion

final order of conviction was in 2001, and this motion filed on July 20, 2012, was filed over 11 years later, clearly outside the applicable three-year limit.

12. Moreover, the claims that Defendant raises in the subject Rule 61 motion were not previously asserted in a prior post conviction proceeding as required by the court rules and are therefore procedurally barred¹⁴; nor were the claims previously asserted at trial or on direct appeal as required by the court rules.¹⁵ Defendant had time and opportunity to raise any issue he so desired in a timely filed postconviction motion and either did so, or neglected to do so. Having already been provided with a full and fair opportunity to present any issues desired to be raised, any attempt at this late juncture to raise a new claim is barred. Accordingly, Defendant's motion should be dismissed because it is procedurally barred.

13. Fourth, even if Defendant contends that he was not aware that his past criminal record could be used against him to enhance a subsequent sentence until the federal court in Pennsylvania did so, and that this new awareness somehow rises to the level of constituting something new or recently discovered, Defendant was required to have raised this issue in a postconviction relief motion within one year of his revelation.¹⁶ Defendant appears to have been convicted in federal court in November 2004, and by April 17, 2008, Defendant's convictions and sentences had been upheld by the Third Circuit Court of Appeals.¹⁷ Defendant waited well over four years after his appeal was decided and his federal convictions and sentences upheld to raise this issue. Defendant

must be filed within one year. *See*, Super.Ct.Crim.R. 61(i)(1)(July 1, 2005) (amending Super.Ct.Crim.R. 61 (i)(1) (May 1, 1996).

¹⁴Super.Ct.Crim.R. 61(i)(2).

¹⁵Super.Ct.Crim.R. 61(i)(3).

¹⁶ *See*, Super.Ct.Crim.R. 61(i)(1).

¹⁷ *See*, *United States v. Crawford*, 2008 WL 1748248 (3rd Cir. 2008), *cert. den.*, 555 U.S. 859 (2008).

has failed to provide any basis for his delay and, consequently, even if his “new” revelation had any merit, it is now time barred.

14. Defendant has failed to overcome any of the procedural bars by showing a “colorable claim that there was a miscarriage of justice” or that “reconsideration of the claim is warranted in the interest of justice.” The “miscarriage of justice” exception is a “narrow one and has been applied only in limited circumstances.”¹⁸ The Defendant bears the burden of proving that he has been deprived of a “substantial constitutional right.”¹⁹ The Defendant has failed to provide any basis, and the record is devoid of, any evidence of manifest injustice. It is clear from Defendant’s motion that Defendant’s claims do not meet the high standard that the fundamental fairness exception requires. The Court does not find that the interests of justice require it to consider these otherwise procedurally barred claims for relief.

15. Finally, Defendant’s motion should also be dismissed on the separate and independent basis that it lacks merit. As previously discussed, the factual predicate for this motion is incorrect. It was not the subject misdemeanor convictions that resulted in an enhancement of Defendant’s convictions and sentences in his subsequent federal action. The misdemeanor convictions at issue did not render Defendant a convicted felon nor did the misdemeanor convictions involve any drug related conviction.

16. Yet, even if the subject misdemeanor convictions did somehow enhance the sentence of a subsequent offense, Defendant’s subject Rule 61 motion is still without merit. A defendant may not challenge a prior conviction based on a guilty plea years after sentencing simply because the conviction will potentially enhance his penalty for a

¹⁸ *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

¹⁹ *Id.*

subsequent offense.²⁰ As a matter of common sense, a defendant should know, and need not be told, that his criminal history will stay with him and remain a part of his permanent record.

17. There is no duty to inform a defendant of the sentencing consequences of a crime that the defendant has not yet committed. A defendant does not have to be informed of the contingent or collateral subsequent federal consequences of his plea.²¹ “Manifest injustice” is not established by a defendant seeking to withdraw his guilty plea because the conviction will potentially enhance his penalty for a subsequent offense in a different court in a different state.²²

For all of the foregoing reasons, Defendant’s Motion for Postconviction Relief should be denied.

IT IS SO RECOMMENDED.

Commissioner Lynne M. Parker

cc: Prothonotary

²⁰ *State v. Dibrigida*, 1999 WL 1222789, at *2 (Del.Super.)(the Court can find no authority to indicate that it has a duty to inform a defendant of the sentencing consequences of a crime that the defendant has not yet committed and, therefore, defendant’s argument that he was not informed that a subsequent conviction could subject him to enhanced penalties is not a sufficient basis to challenge a prior conviction.); See also, *C.N.V. v. State*, 2000 WL 3320090, at *6-7 (Del.Fam.Ct. 2000)(“manifest injustice” is not established by a defendant seeking to withdraw his guilty plea because the conviction will potentially enhance his penalty for a subsequent offense); *Kipp v. State*, 704 A.2d 839, 842 (Del. 1998)(a defendant must understand the consequences of pleading guilty, but this does not include informing him of collateral civil or criminal consequences of the plea.).

²¹ *Id.*

²² *Id.*