

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

SUSSEX COUNTY COURTHOUSE  
1 THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947  
TELEPHONE (302) 856-5264

December 10, 2012

Johnny R. Honaker  
SB# 0020  
Sussex Correctional Institution  
P.O. Box 500  
Georgetown, DE 19947

RE: **State of Delaware v. Johnny R. Honaker**  
Case ID: 0212006828

Dear Mr. Honaker:

Your motion for postconviction relief on case ID # 0212006828, Rape Fourth Degree, is summarily dismissed. You pled guilty to this charge May 7, 2003. You were sentenced to five years at L5 suspended for one year at L4 and four years of decreasing levels of supervision. Your motion and the record of the proceedings show that you are not entitled to relief. Super.Ct.Crim.R. 61(d)(4). Your motion for appointment of counsel is denied because you have not shown cause for such appointment. Super.Ct.Crim.R. 61(e)(1).

On November 15, 2007, I sentenced you on your fourth VOP to 18 months L5 suspended after 3 months for 9 months L4 work release, then to be discharged as unimproved. You completed this sentence and were discharged July 12, 2009.

You are now incarcerated on new charges. On case # 1108016412, the Honorable T. Henley Graves found you to be a habitual offender and sentenced you to 3 years L5 plus an additional 10 years suspended for completion of the Greentree program.

In your motion, you argue that defense counsel was constitutionally ineffective. You assert that the Delaware Supreme Court instructed you to file for postconviction relief motion. You were not so instructed. In addressing your allegations on a previous VOP, the Court noted that a postconviction motion is the vehicle for ineffectiveness claims. However, your motion does not meet the threshold requirement for postconviction relief. Rule 61 governs applications by persons "in custody or subject to future custody under a sentence of this court." As explained above, you are not in custody on the conviction for rape fourth, which is the case on which you premise your

ineffectiveness claim. Because your rape fourth sentence is complete, postconviction relief is not available. Further, your motion was not timely filed. Super.Ct.Crim.R. 61(i)(1).

You are now in custody on a different conviction. Thus, it appears plainly from your motion and the record that you are not entitled to relief.

Your motion for relief as to case #0212006828, Rape Fourth Degree is **SUMMARILY DISMISSED** and your motion for appointment of counsel is **DENIED**.

**IT IS SO ORDERED.**

Very truly yours,

*/s/ Richard F. Stokes*

Richard F. Stokes

Original to Prothonotary

xc: David Hume,IV, Esquire, DOJ  
Carole J. Dunn, Esquire, Office of the PD