

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

STATE OF DELAWARE :
 :
 v. : Case No. 0510007925
 :
 LARRY D. MARVEL, :
 :
 Defendant. :

ORDER

This 24th day of **May, 2013**, upon consideration of Defendant's second Motion for Post-Conviction Relief filed on March 4, 2013, Defendant's Motion for Stay of Postconviction Rule 61 Motion and Proceedings filed on March 11, 2013, Defendant's Addendum Memorandum of Law filed on April 18, 2013, the Commissioner's April 18, 2013 Report and Recommendation that Defendant's Motion for Rule 61 Postconviction Relief should be Summarily Dismissed and that Defendant's Motion for a Stay of his Rule 61 Motion and Proceedings Should be Denied, Defendant's Opposition to the Commissioner's Report and Recommendation filed April 29, 2013, and a careful, thorough, and *de novo* review of the record in this case, it appears that:

1. Defendant was convicted by a Superior Court jury in May 2006 of Criminal Solicitation Second Degree and Conspiracy Second Degree. He was

sentenced, as a habitual offender, to life imprisonment for the criminal solicitation conviction and two years at Level 5 for the conspiracy conviction.

2. The facts of the case are that Defendant, while serving a prison sentence for the rape of Leah Vinguiera, hired an inmate who was about to be released from prison to cripple Ms. Vinguiera either by shooting or stabbing her in the spine so that she would suffer during the rest of her life. After defendant provided Ms. Vinguiera's known address, telephone number, and social security number obtained from a hospital record where Ms. Vinguiera went to for treatment following the rape, and assured the inmate that he could pay \$10,000 from the sale of family-owned beach property, the inmate contacted the police. The police obtained Defendant's correspondence; and the inmate, at trial, explained the coded language contained in the letters.¹

3. Defendant, thereafter, filed a direct appeal to the Delaware Supreme Court², three motions for corrections of illegal sentences³, one motion for postconviction relief order Rule 61 (alleging ineffective assistance of counsel)⁴, an appeal to the Delaware Supreme Court on the denials of his motions for correction

¹ *State v. Larry Marvel*, Opinion, June 25, 2008.

² *Marvel v. State*, 2007 WL 2713271 (Del.) – Conviction Affirmed.

³ Superior Court Docket Nos. 44, 58, 64 – Motions Denied.

⁴ Superior Court Docket No. 53 – with amendments filed on May 20, 2008, June 2, 2008, and June 11, 2008 Motion Denied.

of illegal sentence and denial of motion for postconviction relief,⁵ a petition for a writ of habeas corpus,⁶ and a motion for reconsideration from the denial of his petition for writ of habeas corpus.⁷

4. On March 11, 2013, Defendant now files this second Motion for Postconviction Relief alleging the absence of effective representation because he did not have counsel on his first Rule 61 motion for postconviction relief, citing *Martinez v. Ryan*.⁸ Defendant also filed a motion for a Stay of this Rule 61 Motion because he has “Post-Judgment proceedings pending in U.S. District Court of Delaware in Federal Habeas Corpus Relief Petition No. 08-837-GMS reviewing his criminal conviction on several issues.”⁹

5. Defendant’s Motions were referred to Superior Court Commissioner Parker pursuant to 10 Del. C. §521(b) and Superior Court Rule 62 for proposed findings of fact and conclusions of law.

6. On April 18, 2013, The Commissioner filed a Report and Recommendation that Defendant’s Motion for Rule 61 Postconviction Relief should be Summarily Dismissed and that Defendant’s Motion for a Stay of his Rule 61 Motion and Proceedings should be Denied.

⁵ *Marvel v. State*, 2008 WL 1813171 (Del.); *Marvel v. State*, 2008 WL 4151830 (Del.); *Marvel v. State*, 2009 WL 2158107 (Del.); and *Marvel v. State*, 2010 WL 363193 (Del.). The Delaware Supreme Court affirmed all four Superior Court decisions.

⁶ *Marvel v. Phelps*, 2012 WL 404629 (D. Del.) Denied by the U.S. District Court for the District of Delaware.

⁷ *Marvel v. Phelps*, 2013 WL 653956 (D. Del.) Denied.

⁸ *Martinez v. Ryan*, 132 S.Ct. 1309 (2012).

⁹ Defendant’s Motion for Stay, p. 2.

7. The Commissioner found that Defendant had not articulated any “specific, substantive ineffective assistance of counsel claim that may exist which he had not previously raised”¹⁰. The Commissioner also determined that Defendant’s motion was untimely, procedurally barred, and lacks merit. Pursuant to Superior Court Criminal Rule 61(i)(1), (2), (3), and (4) that it plainly appears that Defendant is not entitled to relief. The Commissioner also found that Defendant has not established a miscarriage of justice or deprivation of a substantial constitutional right pursuant to Superior Court Criminal Rule 61(i)(5) that would make (1), (2), or (3) inapplicable.

8. Defendant next filed an Opposition to the Commissioner’s Report and Recommendation. He asserts that the Commissioner’s Report and Recommendation should be disregarded in its entirety because it failed to consider his “Addendum to Memorandum of Law” which was received by the Court on the same day that the Commissioner issued the Report and Recommendation.

9. The Addendum to Memorandum of Law essentially elaborates on the issue raised in Defendant’s Motion for Postconviction Relief and Memorandum of Law that had been submitted by Defendant in March and considered by the Commissioner in its April report. Contrary to Defendant’s assertion, and irrespective of whether the Commissioner’s Report and Recommendation crossed

¹⁰ Commissioner’s Report and Recommendation, p. 2.

in the mail with Defendant's Addendum to Memorandum of Law, the issue raised in *Martinez* was thoroughly addressed by the Commissioner in the Report and Recommendation.

10. Indeed, the Commissioner wrote that "The Delaware Supreme Court has consistently held that there is no constitutional right to counsel in a postconviction proceeding",¹¹ citing *Garnett v. State* and *Cropper v. State*¹². The Commissioner continued that "Rule 61(e) permits the Court to appoint counsel for an indigent movant only in the exercise of discretion and for good cause shown."¹³

11. Thus, the Commissioner's Report and Recommendation addressed the gravamen of Defendant's motion and complaint.

12. Moreover, Defendant's reliance on *Martinez* is misplaced. *Martinez* involved the appointment of counsel in *federal* habeas corpus proceedings. The instant case is not a federal case and, in any event, Defendant has a pending federal petition. Furthermore, the Delaware Supreme Court decided, after *Martinez*, that "...there is no right to appointed counsel in postconviction proceedings. Whether or not to appoint counsel to represent a defendant [on a Rule 61 motion] lies within the sound discretion of the Superior Court."¹⁴ So too, *State v. Johnson* decided months after *Martinez* holds that, "The Delaware Supreme Court has consistently

¹¹ Commissioner's Report and Recommendation, p. 5.

¹² *Garnett v. State*, 1998 WL 184489 (Del.), *Cropper v. State*, 2001 WL 1636542 (Del.).

¹³ Citations omitted.

¹⁴ *State v. Johnson*, 2012 WL 5364693.

held that there is no constitutional right to counsel in a postconviction proceeding.¹⁵ The United States Supreme Court's decision in *Martinez v. Ryan*,¹⁶ did not change Delaware's longstanding rule that defendants have no constitutional right to counsel in a postconviction proceeding.¹⁷ Indeed, the United States Supreme Court in *Martinez* made it clear that when, like the subject motion, a Rule 61 motion is insubstantial, wholly lacking in merit, and wholly without any factual support, a request for the appointment of counsel is properly denied."¹⁸

13. So too, the Commissioner considered Defendant's request for a Stay of his Rule 61 motion and proceedings. The Commissioner found that because Defendant's Rule 61 Motion is untimely, procedurally barred, and without merit, "[t]here is no just reason to delay the consideration of Defendant's Rule 61 Motion during the pendency of Defendant's most recent *federal* habeas corpus relief petition."¹⁹

14. Thus, based on a careful, thorough, and *de novo* review of the record, and for the reasons stated in the Commissioners Report and Recommendation, that Defendant's Motion for Rule 61 Postconviction Relief should be Summarily Dismissed and Defendant's Motion for a Stay of his Rule 61 Motion and Proceedings Should be Denied.

¹⁵ *Garnett v. State*, 1998 WL 184489(Del.); *Cropper v. State*, 2001 WL 1636542 (Del.).

¹⁶ *Martinez v. Ryan*, 132 S.Ct. 1309 (2012).

¹⁷ See, *Martinez*, 132 S.Ct. at 1315-1320.

¹⁸ See, *Martinez v. Ryan*, 132 S.Ct. at 1309, 1319 (2012); Superior Court Criminal Rule 61(e).

¹⁹ Commissioner's Report and Recommendation, p. 6.

IT IS ORDERED, that the Commissioner's Report and Recommendation is adopted by this Court and that the Defendant's Motion for Rule 61 Postconviction Relief is **SUMMARILY DISMISSED** and the Defendant's Motion for a Stay of his Rule 61 Motion and Proceedings is **DENIED**.

Judge Diane Clarke Streett

Original to Prothonotary

xc: Department of Justice, Felony Screening
Ronald Payne aka Tayari Makau Uhuru, Defendant