

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

STATE OF DELAWARE)	
)	
v.)	I.D. No. 0010014660
)	
JOHN C. MAYHEW,)	
)	
Defendant.)	

UPON CONSIDERATION OF DEFENDANT’S FIRST
PRO SE MOTION FOR POSTCONVICTION RELIEF
DENIED

Submitted: March 3, 2008
Decided: March 10, 2008

This 10th day of March, 2008, it appears to the Court that:

1. On October 15, 2001, John C. Mayhew (Mayhew) pleaded guilty to two counts of Robbery in the First Degree (Robbery 1st), one count of Burglary in the Second Degree (Burglary 2nd), one count of Burglary in the Third Degree (Burglary 3rd), and one count of Theft of a Firearm (Theft). Mayhew was sentenced on December 28, 2001. On one of the Robbery in the First Degree counts, Mayhew was sentenced to ten years at Level V Key, suspended after two years for eight years at Level IV Crest, suspended after twelve months for seven years at Level III Aftercare, suspended after two years for five years at Level II. For his second Robbery 1st degree conviction, he was sentenced to two years of mandatory time at Level V.

On the Burglary 2nd degree conviction, Mayhew was sentenced to three years at Level V, suspended for three years at Level II. On the Burglary 3rd degree conviction, Mayhew was sentenced to twenty-one months at Level V, suspended for twenty-one months at Level II probation. For the Theft conviction, Mayhew was sentenced to twenty-one months at Level V, suspended for twenty-one months at Level II. In sum, Mayhew had to serve four years of minimum mandatory time at Level V, none of which was subject to credits for “good time,”¹ as well as a substantial amount of probation at declining levels, as the sentence was imposed prior to the enactment of Senate Bill 50.²

2. Mayhew then filed two motions to have his sentence reduced. Since the motions for modification were not filed within ninety days of his sentence in accordance with Rule 35(b) of the Superior Court Criminal Rules, and since the Court deemed his sentences appropriate, both motions were denied.

¹ On February 5, 2008, the Court found that Mayhew violated his probation for one count of Robbery 1st degree. The Court modified his sentence to seven years at Level V, suspended for seven years at Level IV, suspended after six months at Level IV, with the balance to be served at Level III. Mayhew was to be held at Level V, however, until space became available at a Level IV detention center.

² Former Senate Bill 50, which is found at 74 Del. Laws c.27, was enacted in 2003 prior to Mayhew’s original sentencing. That Bill, which amended 11 *Del. C.* § 4333, established limits to certain probationary sentences. The Bill does not apply to defendants, such as Mayhew, sentenced before the law was enacted. *See* 74 Del. Laws c. 88, § 1 (Approved June 30, 2003), S.B. 150.

3. Mayhew has now filed this, his first *pro se* motion for postconviction relief. Although not clear from his motion, Mayhew appears to argue that he is entitled to good time and other benefits under 11 *Del. C.* § 4381 because he has served his mandatory sentence. He asserts that he has undergone all required treatment programs and has participated in work ethic programs. Mayhew also argues that he is entitled to a transitional period of time for adjustment into society of six months under 11 *Del. C.* § 4204(1). Finally, Mayhew asks this Court why his sentence was enhanced at Level III for seven years rather than at Level II. In essence, the relief requested in this motion is the same as in his motions for sentence modification, but since he has labeled this motion as one for postconviction relief, the Court will analyze it as such.

4. Prior to addressing the substantive merits of any claim for postconviction relief, the Court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61 (“Rule 61”).³ If the procedural requirements of Rule 61 are not met, in order to protect the integrity of the procedural rules, the Court should not consider

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). *See also Bailey v. State*, 588 A.2d 1121, 1127 (Del. Super. Ct. 1991).

the merits of a postconviction claim.⁴ In that case, the Court may summarily dismiss the defendant's claim "[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[.]"⁵

5. Rule 61(i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;⁶ (2) any basis for relief must have been asserted previously in any prior postconviction proceeding; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules unless the movant shows prejudice to his rights or cause for relief; and (4) any basis for relief must not have been formerly adjudicated in any proceeding. The bars to relief under (1), (2), and (3), however, do not apply "to a claim that the court lacked jurisdiction or to 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

⁴ *State v. Gattis*, 1995 WL 790961, at *2 (Del. Super. Ct. Dec. 28, 1995) (citing *Younger*, 580 A.2d at 554).

⁵ Super. Ct. Crim. R. 61(d)(4).

⁶ 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, however, the motion 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)).

judgment of conviction.”⁷ Moreover, the procedural bars of (2) and (4) may be overcome if “reconsideration of the claim is warranted in the interest of justice.”⁸

6. Mayhew’s claims are procedurally barred. Specifically, Rule 61(i)(1) precludes Mayhew’s arguments because he has filed this motion seven years after his sentence was imposed, which is more than the three-year period permitted by Rule 61(i)(1). Since Mayhew’s claims are procedurally barred, he must meet one of the exceptions to overcome the bars to relief.

7. Mayhew has failed to overcome the procedural bars to his claims. Mayhew has not alleged any “miscarriage of justice”, nor has he alleged that reconsideration of his claim is warranted in the interest of justice. The Court explicitly sentenced him to four years of mandatory time, not subject to “good time” credits. In fact, Mayhew’s sentence includes the mandatory six month transition period requested by him.⁹ Mayhew’s claim

⁷ Super. Ct. Crim. R. 61(i)(5).

⁸ *Id.* R. 61(i)(4).

⁹ *See* 11 *Del. C.* § 4204(1) (“[W]henver a court imposes a period of incarceration at Level V custody for 1 or more offenses that totals 1 year or more, then that court must include as part of its sentence a period of custodial supervision at either Level IV, III or II for a period of not less than 6 months to facilitate the transition of the individual back into society. The 6-month transition period required by this subsection may, at the

that he was not provided any probationary time for transition to society is patently untrue. The Court sentenced him to a substantial amount of time at all levels, beginning with Level IV Crest and ending with Level II. More recently, on February 5, 2008, Mayhew's probation was violated, and he received a second period of Level IV probation for a period of six months.

8. Furthermore, in response to his requests, this Court has explained to Mayhew on numerous occasions that his sentence was appropriate at the time of sentencing and will not be reconsidered.¹⁰ Correspondence from the Delaware Department of Correction indicates that, contrary to his argument that he was on good behavior at all times, Mayhew threatened other inmates.¹¹ As a result, Mayhew's sentence will not be disturbed by this Court.

9. For all of the foregoing reasons, Mayhew's motion for postconviction relief is hereby **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

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discretion of the court, be in addition to the maximum sentence of imprisonment established by the statute.”).

¹⁰ See Dockets 14, 17, 20.

¹¹ Docket 15.