

available at Level IV Crest. Shepherd did not appeal his plea or his sentence.

2. Shepherd has now filed his first motion for postconviction relief. In his motion, Shepherd raises three claims. First, he claims that he was illegally detained and arrested for his crimes because he should have been charged with Escape in the Third Degree rather than in the Second Degree. In support of this claim, Shepherd contends that Christiana Hospital was a non-secure facility and that, because he was incoherent from drugs, he believed that he was escaping a “little green man trying to kill [him].” Second, he claims that he is entitled to 95 days credit from August 20, 2006 through November 23, 2006 while he was hospitalized and for 31 days credit from June 20, 2007 through July 20, 2007 while he was held without bail before his sentencing. Third, he claims that counsel was ineffective for failing to raise a claim of double jeopardy. He offers no evidence or argument in support of this claim.

3. 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”).¹ 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 the merits of a postconviction claim.²

4. Rule 61(i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;³ (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

¹ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). *See also Bailey v. State*, 588 A.2d 1121, 1127 (Del. Super. Ct. 1991).

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

³ 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.”⁴ Moreover, the procedural bars of (2) and (4) may be overcome if “reconsideration of the claim is warranted in the interest of justice.”⁵

5. Shepherd’s claims are procedurally barred. Rule 61(i)(3) bars consideration of his illegal detention claim, as well as his request for credit, because he failed to appeal his convictions and sentencing. Shepherd was certainly aware, either at the plea colloquy or on appeal, that he could have raised the issue of intoxication related to drugs or the issue of credit for time served.⁶ The Court will also not consider his ineffective assistance of counsel claim or the double jeopardy claim because they are merely conclusory without any supporting facts.⁷ As a result, Shepherd must overcome the procedural bars to merit this Court’s consideration of his motion.

6. Shepherd has failed to demonstrate any miscarriage of justice warranting consideration of his motion.⁸ The “miscarriage of justice” exception is a “narrow one and has been applied only in limited

⁴ Super. Ct. Crim. R. 61(i)(5).

⁵ *Id.* R. 61(i)(4).

⁶ *See Younger*, 580 A.2d at 555.

⁷ *Id.*

⁸ Super. Ct. Crim. R. 61(i)(5).

circumstances, such as when the right relied upon has been recognized for the first time after a direct appeal.”⁹ Shepherd has not offered any new right or other limited circumstance that would warrant application of this exception. Moreover, nothing in Shepherd’s motion demonstrates that consideration of his claims are warranted “in the interest of justice.”¹⁰ Shepherd pleaded guilty to the crimes for which he was charged. Shepherd cannot now contend that he was charged with the wrong crime or that his convictions are barred on double jeopardy grounds because a voluntary guilty plea waives any defects or errors occurring before the defendant pleads guilty.¹¹ There is also no evidence in the record, nor does Shepherd point to any, that suggests Shepherd was sentenced inappropriately or that reconsideration is warranted in the interest of justice. Shepherd, in fact, was given 87 days credit in his July 20, 2007 sentence, indicating that the sentencing judge took into consideration his previous time served.

7. More importantly, because Shepherd failed to appeal his sentence, Shepherd must demonstrate “cause” for his failure to raise the

⁹ *Younger*, 580 A.2d at 555 (citing *Teague v. Lane*, 489 U.S. 288, 297-98 (1989)).

¹⁰ *Id.* R. 61(i)(4).

¹¹ See *Hall v. State*, 937 A.2d 139, 2007 WL 3170467, at *1 (Del. Oct. 30, 2007) (ORDER) (citing *Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988)). Notably, Shepherd does not contend that his plea was made involuntarily or unknowingly.

issue previously and “actual prejudice” resulting from the alleged error.¹² Shepherd has offered no reason for his failure to appeal.¹³ Accordingly, Shepherd has failed to demonstrate any miscarriage of justice or any error warranting reconsideration in the interests of justice.

8. For the foregoing reasons, Shepherd’s motion for postconviction relief is hereby **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, J.

Original to Prothonotary

¹² *Younger*, 580 A.2d at 555.

¹³ *Id.* at 556 (citing *Murray v. Carrier*, 477 U.S. 478, 492 (1986)) (noting that a showing of cause requires “a showing of some external impediment preventing counsel from constructing or raising the claim”).