

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

STATE OF DELAWARE)
)
 v.) No. 0304003074
)
 ROGER BOATSWAIN,)
)
 Defendant.)

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

Submitted: April 7, 2008
Decided: April 8, 2008

This 8th day of April, 2008, it appears to the Court that:

1. On July 1, 2004, a jury found Roger Boatswain (“Boatswain”) guilty of two counts of Robbery in the First Degree, two counts of Possession of a Deadly Weapon During the Commission of a Felony (“PDWDCF”), and one count of Possession of a Deadly Weapon by a Person Prohibited (“PDWBPP”). On direct appeal, the Delaware Supreme Court affirmed his convictions.¹

2. Boatswain filed this, his first *pro se* motion for postconviction relief, on March 17, 2008. In this motion, Boatswain argues that he received ineffective assistance of counsel at both trial and on his direct appeal.

¹ *Boatswain v. State*, 872 A.2d 959, 2005 WL 1000565 (Del. Apr. 27, 2005) (Table).

Boatswain has not specifically identified any alleged error that counsel made, nor has he cited any factual evidence in support of his contention.

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”).² 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.³ 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[.]”⁴

4. Rule 61(i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;⁵ (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

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

³ *State v. Gattis*, 1995 WL 790961, at *2 (Del. Super. Ct. Dec. 28, 1995) (citing *Younger*, 580 A.2d at 554).

⁴ Super. Ct. Crim. R. 61(d)(4).

⁵ 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)).

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 judgment of conviction.”⁶ Moreover, the procedural bars of (2) and (4) may be overcome if “reconsideration of the claim is warranted in the interest of justice.”⁷

5. In this case, Boatswain’s claim is not procedurally barred. Since the motion was filed within three years of his final order of conviction, and it is his first postconviction motion, Boatswain’s claim of ineffective assistance of counsel is properly raised in this first postconviction motion and the court has not previously adjudicated his claim of ineffective assistance of counsel.⁸ Finally, a claim of ineffective assistance of counsel is “a constitutional violation that undermines the fundamental legality,

⁶ Super. Ct. Crim. R. 61(i)(5).

⁷ *Id.* R. 61(i)(4).

⁸ See *Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986) (noting that the Supreme Court will not consider a claim of ineffective assistance of counsel until it was raised in the first instance in a lower court).

reliability, integrity or fairness of a proceeding.”⁹ Thus, the Court will address Boatswain’s claim.

6. Before the Court will consider a defendant’s ineffective assistance of counsel claim, however, the defendant must assert concrete allegations of counsel’s ineffective assistance and substantiate them with facts in order to avoid summary dismissal.¹⁰ Here, Boatswain has merely alleged that he was provided ineffective assistance of counsel. He has not explained how his counsel was ineffective, what actions he did or not do, or what he should have done. He offers absolutely no factual support for his conclusory statement that he was not afforded effective assistance of counsel. Without even a *prima facie* showing that counsel was ineffective, it plainly appears to this Court that Boatswain is not entitled to any relief. Thus, the Court is required summarily to dismiss his claim.

7. For all of the foregoing reasons, Boatswain’s motion for postconviction relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Peggy L. Ableman, J.

Original to Prothonotary

⁹ *State v. Morla*, 2007 WL 2566012, at *3 (Del. Super. Ct. Aug. 30, 2007).

¹⁰ *Younger*, 580 A.2d at 556.