

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

STATE OF DELAWARE)	
)	
v.)	I.D. # 9609002180
)	
ARTHUR T. WATSON,)	
)	
Defendant)	
)	

Submitted: January 10, 2008
Decided: March 25, 2008

Upon Defendant's Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

Colleen K. Norris, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Arthur T. Watson, Smyrna, Delaware, *pro se*.

COOCH, J.

This 25th day of March, 2008, upon consideration of Defendant's third motion for postconviction relief, it appears to the Court that:

1. Arthur T. Watson, Jr. (“Watson”) has filed this third “Motion for Postconviction Relief” pursuant to Superior Court Criminal Rule 61. For the reasons stated below, Watson's motion is **SUMMARILY DISMISSED**.

2. In May 1997, a jury found Watson guilty of one count of Robbery First Degree. The Court sentenced Watson to 25 years at Level V, followed by six months of supervision at Level IV. The Court imposed the 25-year sentence pursuant to § 4214(a) of Title 11, Delaware's “habitual offender” statute.

Watson appealed his conviction and sentencing to the Delaware Supreme Court, and the Supreme Court affirmed, holding that Watson's appeal (on the grounds that Watson was improperly denied conviction records of jury pool members) was without merit.¹ Watson thereafter petitioned for a writ of habeas corpus to the United States District Court for the District of Delaware, and that Court denied Watson's petition.²

In January 2002, Watson filed his first motion for postconviction relief, alleging two grounds in support of the motion.³ This Court held that both of Watson’s claims were procedurally barred, the first ground having

¹ *Watson v. State*, 1998 WL 780343 (Del. Supr.).

² *Watson v. Snyder*, C.A. No. 99-756 RRM (D. Del. June 28, 2001).

³ Watson asserted that the State had used “suggestive identification methods,” which Watson contended violated his “due process rights to equal protection of the law.”³ The second ground simply stated “Correction of Illegal Sentence – 11 *Del. C.* § 4214(a),” followed by Watson’s assertion that he was sentenced “without special conditions for a chance for rehabilitative treatment.”

been previously adjudicated (and thus barred under Delaware Superior Court Criminal Rule 61 (i)(4),⁴) and the second not having been argued in any proceeding prior to the motion (and thus barred under Delaware Superior Court Criminal Rule 61(i)(3)⁵). The Court held that there was no applicable exception to the procedural bars and denied Watson’s first motion for postconviction relief.

In February 2004, Watson filed his second motion for postconviction relief, alleging ineffective assistance of counsel as the ground for the motion.⁶ The Court ruled that the petition was time barred under Superior Court Criminal Rule 61(i)(1), having been filed more than three years after judgment had become final. Further, the Court ruled that Watson’s ineffective assistance of counsel claim had been waived pursuant to Superior Court Criminal Rule 61(i)(2), since Watson had not raised it in his first petition for postconviction relief. The Court ruled that there was no

⁴ Superior Court Criminal Rule 61(i)(4) provides that “[a]ny ground for relief that was formerly adjudicated ... is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.”

⁵ Superior Court Criminal Rule 61(i)(3) provides as follows:

(i) Bars to relief.

...

(3) Procedural default. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction ... is thereafter barred, unless the movant shows:

(A) Cause for relief from the procedural default and

(B) Prejudice from violation of the movant’s rights.

⁶ Specifically, Watson argued that trial counsel provided ineffective assistance by not requesting a *voir dire* question directed at the potential racial bias of jurors.

applicable exception to the procedural bars, and summarily dismissed Watson's second motion for postconviction relief.⁷

3. On January 10, 2008, Watson filed this, his third motion for postconviction relief, in which Watson has alleged three grounds for relief.⁸ Watson has filed no memorandum of law in support of this motion. First, Watson alleges that he was "denied due process [] equal protection," because, he asserts, he was not given his presentence report, and because his counsel did not "secure statistics concerning [the] number of blacks versus [C]aucasians sentenced as habitual criminals." Watson next claims that he received ineffective assistance of counsel because his counsel did not: 1) request separate trials on two robbery charges; 2) address the issue that the victims' ages were supported by the victims' testimony alone; 3) call an F.B.I. records officer "concerning records utilized by state to substantiate habitual criminal claim." In his final asserted ground for relief, Watson claims that his right to due process was violated because the Court "relied only on court records" in sentencing Watson as a habitual offender, and that it was "never established [that the] records or arrest cited belonged to[] Defendant."

⁷ *State. v. Watson*, 2004 WL 2828206, at *2-3 (Del. Super.).

⁸ Watson's stated grounds for relief and their "supporting facts" can all be found on the first half of page three of Defendant's third "Motion for Postconviction Relief."

Watson maintains that his reason for not raising these issues prior to the present motion was that he had a “limited knowledge of law, [and] had to depend on assistance from other inmates.” Watson also alleges that when he originally addressed these grounds with his counsel, Watson’s counsel ignored him.

4. Before addressing the merits of any claim raised in a motion for postconviction relief, the Court must first consider the potential procedural bars of Superior Court Criminal Rule 61.⁹ Rule 61(i)(1) bars motions for postconviction relief filed 3 years after judgment has become final, unless the “fundamental fairness” exception of Superior Court Criminal Rule 61(i)(5) applies, but that exception is narrow and applied only in limited circumstances.¹⁰ Rule 61(i)(2) provides that “[a]ny ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim is warranted in the interest of justice.” Pursuant to Rule 61(i)(2), those grounds not previously raised are deemed waived.¹¹

Superior Court Criminal Rule 61(d)(4) provides that summary dismissal is appropriate “if it plainly appears from the motion for

⁹ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹⁰ *Id.* at 555.

¹¹ *Slade v. State*, 818 A.2d 970 (Del. 2003).

postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief.” To avoid summary dismissal, a movant must do more than make conclusory assertions of law or fact. He or she must support the assertions with “concrete allegations of actual prejudice.”¹² This proposition applies to all grounds for relief, including claims of ineffective assistance of counsel.¹³ The word “conclusory” has been defined as “[e]xpressing a factual inference without stating the underlying facts on which the inference is based.”¹⁴

5. Watson filed the instant motion on January 10, 2008, almost ten years after the Supreme Court of Delaware completed its review of his case, thereby making his judgment of conviction final.¹⁵ Because his motion contains merely conclusory statements of law and fact, Watson has made no showing that the “fundamental fairness” exception (pursuant to Rule 61(i)(5)) to this time bar applies. Thus, Watson’s motion for postconviction relief is procedurally barred as untimely under Superior Court Criminal Rule 61(i)(1).

Furthermore, Watson’s claim is procedurally barred pursuant to Superior Court Criminal Rule 61(i)(2), which required Watson to include in

¹² *State v. Childress*, 2001 WL 1610766, at *1 (Del. Super.).

¹³ *See, e.g., State v. Robbins*, 1996 WL 769219, at *1 (Del. Super.).

¹⁴ BLACK’S LAW DICTIONARY, 308 (8th ed. 2004).

¹⁵ *Watson v. State*, Del.Supr., No. 387, 1997, Hartnett, J. (Oct. 8, 1998).

his prior postconviction applications all grounds for relief available to him. All of his present claims were known, or should have been known, to Watson at the time of Watson's first and second claims for postconviction relief. Watson's claim that he had to "depend on assistance from other inmates" is insufficient grounds for an exception to Rule 61(i)(2), because Watson has not demonstrated that it is in the "interest of justice" for the Court to consider his claim despite this procedural bar. Thus, Watson's motion is also procedurally barred by Rule 61(i)(2).

It plainly appears from Watson's motion that he is not entitled to postconviction relief, and that his motion should be summarily dismissed. In this, Watson's third motion for postconviction relief, Watson has only made conclusory assertions of law and fact. The substantive portion of Watson's motion is entirely contained on one half of a page of his motion. Nowhere does Watson assert "concrete allegations of actual prejudice." Nor does Watson provide valid grounds as to why his motion should not be procedurally barred as untimely under Rule 61(i)(1), or procedurally barred under Rule 61(i)(2) as having failed to have been raised in Watson's previous two motions for postconviction relief.

6. Based on the above, this Court holds that the procedural bars of Superior Court Criminal Rule 61, specifically Rule 61(i)(1) and 61(i)(2), apply to preclude Watson's asserted claims for postconviction relief. Therefore, pursuant to Superior Court Criminal Rule 61(d)(4), Defendant's motion is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

oc: Prothonotary
cc: Investigative Services