

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

STATE OF DELAWARE	)	
	)	
v.	)	I.D. # 0603001556
	)	
CORNELIUS WARREN	)	
	)	
Defendant	)	
	)	

Submitted: February 21, 2008  
Decided: May 14, 2008

Upon Defendant's Motion for Postconviction Relief.  
**DENIED.**

**ORDER**

Renee L. Hrivnak, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Cornelius Warren, Smyrna, Delaware, *pro se*.

COOCH, J.

This 14<sup>th</sup> day of May, 2008, upon consideration of Defendant's first motion for postconviction relief, it appears to the Court that:

1. On August 28, 2006, Cornelius Warren (“Defendant”) pleaded *nolo contendere* to Rape Fourth Degree, and was sentenced on November 3, 2006 to 5 years at supervision level five, suspended after serving 2 years, 6 months, with the remainder to be served at varying degrees of supervision levels. No appeal from the sentence was taken.

2. Defendant filed the instant motion for post-conviction relief on October 31, 2007, and has raised three grounds for relief.<sup>1</sup> First, Defendant has alleged “Insufficient Evidence” to support the victim’s statement. In support of this contention, he states that: there was “[n]o forensic evidence or eye witnesses to corroborate the victim’s statements;” that the “[v]ictim had an STD that does not connect with the defendant”; and that “[t]he victim stated she only had two sexual encounters, with the defendant and Rahsaan Dixon.” Next, Defendant lists “Credibility of Victim Statement” as a ground for relief, contending that:

[t]he crime was reported over a year later when the victim had opportunity after the alleged sexual assault. The findings of the chlamydia and the denial of any other sexual contact the victim stated to the investigating officer as well as to Dr. DeJong should have been questionable.

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<sup>1</sup> Def. Mot. for Postconviction Relief, at 3.

Finally, Defendant alleges “Ineffective Assistance of Counsel.” Defendant cites alleged “[i]mproper advice given by counsel that resulted in defendant taking a plea where if counsel did better research on the case he would have noticed a variety of inconsistencies in the victim’s statement.”

3. Before addressing the merits of any claim raised in a motion seeking postconviction relief, the Court must first apply the rules governing the procedural requirements of Superior Court Criminal Rule 61.<sup>2</sup>

Rule 61(i)(3) provides that “[a]ny ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred” unless the movant shows “[c]ause for relief from the procedural default and ... [p]rejudice from violation of the movant’s rights.”

Pursuant to Rule 61(i)(5), if a movant alleges a colorable claim of ineffective assistance of counsel that is potentially procedurally barred under Rule 61, then the procedural bars of Rule 61 become inapplicable.<sup>3</sup> “While [a] ‘colorable claim’ does not necessarily require a conclusive showing of

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<sup>2</sup> *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>3</sup> Superior Court Criminal Rule 61(i)(5) provides:  
[t]he bars to relief in paragraph (1) ... shall 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 to the judgment of conviction.

trial error, mere ‘speculation’ that a different result might have obtained certainly does not satisfy the requirement.”<sup>4</sup>

4. The Court holds that Defendant is procedurally barred by Rule 61(i)(3) from bringing the claims he makes in the instant motion. Defendant has not shows “[c]ause for relief from the procedural default” for failing to assert the grounds raised in the instant motion in the proceedings leading to the judgment of conviction; nor has Defendant shown “[p]rejudice from violation of the [his] rights.” Thus, Defendant’s first two grounds for relief are procedurally barred under Rule 61(i)(3). As to Defendant’s claim of ineffective assistance of counsel, Defendant has not asserted a “colorable claim” of ineffective assistance of counsel since he has only speculated that a different result might have obtained; therefore, this ground for relief is also procedurally barred by Rule 61(i)(3).<sup>5</sup>

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<sup>4</sup> *State v. Getz*, 1994 WL 465543, at \*11 (Del. Super.) (finding no exception under Rule 61(i)(5) to the procedural bars of Rule 61).

<sup>5</sup> Defendant’s trial counsel, Timothy J. Weiler, Esq., has filed an Affidavit in response to Defendant’s motion. Mr. Weiler submits that he reviewed with Defendant the affidavit of probable cause, the statutory penalties of the original charge of Rape First Degree, and the statutory penalties for two counts of Rape Second Degree, upon which Defendant was later indicted. Affidavit of Trial Counsel Timothy J. Weiler, at 2. Mr. Weiler also submits that he “responded to Defendant’s letters about the case,” and explained to Defendant that any “‘inconsistencies’ in the victim’s statement could be explored at a trial but not before.” *Id.* at 3. Later, when the State extended to Defendant a plea offer, Mr. Weiler explained the statutory sentencing range to Defendant. Defendant subsequently accepted the plea in light of Mr. Weiler’s consultations as to the potential for substantial minimum mandatory jail time if a jury returned a guilty verdict on the charges in the indictment. *Id.* at 4.

Additionally, and separately, all three allegations are completely conclusory, which warrants a denial of Defendant's motion. A movant must do more than make conclusory assertions of law or fact. A movant must support his or her assertions with "concrete allegations of actual prejudice."<sup>6</sup> Defendant has not done so here.

5. For the reasons stated, Defendant's Motion for Postconviction Relief is **DENIED**.

**IT IS SO ORDERED.**

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Richard R. Cooch, J.

oc: Prothonotary  
cc: Investigative Services  
Renee L. Hrivnak, Esquire, Deputy Attorney General  
Cornelius Warren

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<sup>6</sup> *State v. Childress*, 2001 WL 1610766, at \*1 (Del. Super.).