

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

STATE OF DELAWARE, :  
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 v. : I.D. No. 0405005159  
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 CHARLES MONROE, :  
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 :  
 Defendant. :

Submitted: April 20, 2008  
Decided: May 19, 2008

**ORDER**

*Decision upon Defendant’s Motion for Postconviction Relief*

Charles Monroe (“Monroe”) filed this *pro se* motion for postconviction relief on November 13, 2007 pursuant to Superior Court Criminal Rule 61 (“Rule 61”) citing three grounds for relief. For the reasons set forth below, Monroe’s motion for postconviction relief is DENIED.

On May 6, 2004, Wilmington police officers Robert Fox and Charles Puit were on routine patrol when they observed a vehicle with a handwritten cardboard license plate. The officers ran the tag number and discovered that the registration on the vehicle had expired in March 2003. The officers stopped the vehicle and asked the driver, Monroe, for his license, registration and proof of insurance. Although the license was valid, the registration had expired, and Monroe had no proof of insurance.

While checking Monroe's identification, the officers discovered that he had a criminal history that included weapon offenses. Upon returning to Monroe, the officers asked him to leave the vehicle because the vehicle would be impounded due to its expired registration and Monroe's failure to provide proof of insurance. After Monroe exited the car, the officers asked him if he had any weapons or drugs. Monroe did not answer. Officer Fox then directed Monroe to place his hands on the trunk of the car so that he could be pat down for weapons.

During the pat down search, Officer Fox felt something hard in the small of Monroe's back. When asked what it was, Monroe said it was a back brace. The officer lifted Monroe's shirt and saw the handle of a gun inside the back brace. Monroe then attempted to flee. The officers grabbed Monroe and struggled with him before wrestling him to the ground. Once Monroe was in handcuffs, the officers searched him further and discovered ammunition.

Monroe was indicted for Possession of a Deadly Weapon by a Person Prohibited, Possession of Ammunition by a Person Prohibited, Carrying a Concealed Deadly Weapon, Possession of a Weapon in a Safe School Zone, Offensive Touching of a Law Enforcement Officer, Resisting Arrest, Operating an Unregistered Motor Vehicle, No Proof of Insurance and Assault 3<sup>rd</sup> Degree. The case proceeded to trial. His attorney prior to trial was Ralph D. Wilkinson, IV, Esquire ("Wilkinson"). Monroe's motion to proceed *pro se* at trial was granted. Wilkinson remained available to Monroe throughout the proceedings.

On January 6, 2005, a jury returned verdicts of not guilty of Assault 3<sup>rd</sup> Degree and guilty of the other indicted charges. Upon the State's motion, he was declared a habitual offender under 11 *Del. C.* § 4214 and sentenced to a total of 12 years imprisonment, suspended after 9 years for 2 years probation and a fine.

Monroe filed a timely appeal of his convictions and sentence. On October 15, 2005, the Delaware Supreme Court remanded the matter to this Court for an evidentiary hearing regarding the voluntariness of Monroe's decision to proceed *pro se* on appeal. An evidentiary hearing was held on November 16, 2005, and an order on remand was issued November 21, 2005, concluding that Monroe must proceed *pro se* if he is unwilling to accept the services of Wilkinson to assist him on appeal. The Delaware Supreme Court appointed conflict counsel to represent Monroe on appeal, James J. Haley, Jr., Esquire. The Supreme Court affirmed his convictions and sentence.<sup>1</sup>

Monroe timely filed this postconviction motion on November 13, 2007, which raised three substantive issues: (1) that he was denied counsel at trial because his decision to proceed *pro se* was not voluntarily made; (2) that "unauthenticated" evidence was admitted at trial; and (3) ineffective assistance of counsel.

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 Rule 61.<sup>2</sup> 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.

Rule 61(i) imposes certain procedural requirements: the motion must be filed within one year of a final order of conviction; 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 any basis for relief must not have been formerly adjudicated in any proceeding. The bars to relief, 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

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<sup>1</sup> *Monroe v. State*, 2006 WL 3482182 (Del. Dec. 4, 2006).

<sup>2</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

of the proceedings leading to the judgment of conviction.”<sup>3</sup> Moreover, the procedural bars may be overcome if “reconsideration of the claim is warranted in the interest of justice.”<sup>4</sup>

#### *Denial of Counsel at Trial*

Monroe argues that his decision to proceed *pro se* at trial was not voluntarily made. The substance of Monroe’s argument is that “the absence of any ‘assistance’ of counsel at Trial [sic] has never been remedied.”<sup>5</sup> This argument is procedurally barred pursuant to Rule 61(i)(3) because it was not raised on direct appeal. By letter dated December 3, 2004, Monroe was informed by Judge Silverman of the hazards of proceeding *pro se*. Thereafter, his motion was presented at a hearing on January 4, 2005. After an extended discussion, when the source of his grievance was explored and he was questioned about his knowledge and experience, he was permitted to have a suppression hearing – although untimely – and to proceed *pro se* with counsel on standby.<sup>6</sup> The defendant insisted that he be allowed to proceed *pro se*. His decision was voluntary.

#### *Admission of “Unauthenticated” Evidence*

Monroe claims that this Court erred in permitting the State to introduce the back brace he was wearing at the time of his arrest. This claim was not raised on direct appeal and is procedurally barred under Rule 61(i)(3). The back brace was admitted at trial without objection. Defendant had an opportunity to examine the back brace and did not do so. He has not explained any legitimate basis for excluding it.

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<sup>3</sup> Super. Ct. Crim. R. 61(i)(5).

<sup>4</sup> Super. Ct. Crim. R. 61(i)(4).

<sup>5</sup> Def. Mot. at 5.

<sup>6</sup> Mot. Tr. Jan. 4, 2005; *Gordon v. State*, 1991 WL 165578 (Del. 1991)(stating that a knowledgeable and voluntary waiver of the right to counsel need not be ascertained through a ritualistic formulation or rote questioning).

### *Ineffective Assistance of Counsel*

Monroe's remaining claims allege ineffective assistance of counsel. To prevail on a postconviction relief claim based on ineffective assistance of counsel, defendant is required to meet both prongs of the test set forth in *Strickland v. Washington*.<sup>7</sup> A movant must show both "that counsel's representation fell below an objective standard of reasonableness," and "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."<sup>8</sup> In attempting to establish a claim of ineffective assistance of counsel, the defendant must allege concrete allegations of actual prejudice and substantiate them.<sup>9</sup> Any review of counsel's representation is subject to a strong presumption that the representation was professionally reasonable.<sup>10</sup>

First, Monroe alleges that his appellate counsel was ineffective for failing to raise the preceding claims on direct appeal, and for inadequately arguing the claims that were ultimately raised. Correspondence indicates that appellate counsel was aware of the issues that concerned Monroe.<sup>11</sup> Counsel pursued only those claims for which he had a good faith basis. Monroe has failed to demonstrate how counsel's actions fell below an objective standard of reasonableness.

Second, he alleges that the Court gave an erroneous jury instruction when the jury was instructed, "[o]f course, your verdict(s) must be unanimous."<sup>12</sup> Because he failed to challenge the jury instruction on direct appeal, the claim is procedurally barred under Rule 61(i)(3). No fact exists to trigger an exception to Rule 61(i)(5) which would permit consideration of this procedurally barred claim. Monroe's attorney on appeal has demonstrated that he considered the

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<sup>7</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

<sup>8</sup> *Id.* at 689.

<sup>9</sup> *Younger*, 580 A.2d at 555.

<sup>10</sup> *Strickland*, 466 U.S. at 689.

<sup>11</sup> Letter from James J. Haley, Jr., Esq. to Charles Monroe (Mar. 31, 2006), Haley Aff. (Ex. B).

<sup>12</sup> Jury Instr. at 28.

issue and did not have a good-faith basis to challenge the jury instruction. I find this claim without merit.

Third, Monroe claims that his habitual offender status was improperly granted. This claim is also barred pursuant to Rule 61(i)(3) because it was not raised on direct appeal. Monroe proceeded *pro se* during the Court's consideration of the motion to declare him a habitual offender. He contends that the 1992 conviction for maintaining a vehicle was not a felony conviction and that the State failed to include a copy of the plea agreement as part of its motion for determination of habitual offender status.

Delaware Code states that the offense of maintaining a vehicle for keeping drugs is a class F felony.<sup>13</sup> A review of Monroe's 1992 Truth in Sentencing guilty plea form and plea agreement states that his plea carried with it a statutory penalty of 0 to 3 years.<sup>14</sup> The Truth in Sentencing guilty plea form also demonstrates that Monroe answered "yes" to the statement: Do you understand that a guilty plea to a felony will cause you to lose your right to vote, to be a juror, to hold public office, to own or possess a deadly weapon and other civil rights?

Monroe's counsel on appeal, Mr. Haley, advised him that the guilty plea form clearly indicated that his prior conviction was a felony, and that he did "not see any chance that you could overcome this 'black and white' statement on the prior plea form."<sup>15</sup> Monroe's contention that his appellate counsel erred in failing to raise an issue regarding the habitual offender petition is without merit. He has suffered no prejudice from counsel's decision not to present the issue on appeal and, therefore, has not alleged circumstances that would trigger the exception to permit consideration of this procedurally barred claim under Rule 61(i)(5).

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<sup>13</sup> 16 *Del. C.* § 4755.

<sup>14</sup> 11 *Del. C.* § 4206 (maximum sentence for a misdemeanor is 1 year).

<sup>15</sup> Letter from James J. Haley, Jr., Esq. to Charles Monroe (Mar. 31, 2006), Haley Aff. (Ex. B).

Finally, Monroe claims that he was denied an effective cross-examination of Officer Fox because he did not have a transcript of the preliminary hearing. This claim is barred pursuant to Rule 61(i)(4) as a previously adjudicated claim; it was raised on direct appeal. The Delaware Supreme Court rejected his argument:

First, Monroe did not file a motion for expedited transcription. Second, and more importantly, Monroe has not shown that he was denied a fair trial based upon the unavailability of transcripts. Indeed, the record shows that Monroe was able to present the substance of his argument through cross-examination of Officer Fox without the aid of word-by-word transcription from the suppression hearing.<sup>16</sup>

Monroe has failed to offer any fact to satisfy the “interest of justice” exception that would permit this Court to reconsider this claim.<sup>17</sup>

Monroe’s motion for postconviction relief is DENIED.

IT IS SO ORDERED.

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Judge Susan C. Del Pesco

Original to Prothonotary

xc: Charles T. Monroe, Delaware Correctional Center  
Ralph D. Wilkinson, IV, Esquire  
James J. Haley, Jr., Esquire  
James V. Apostolico, Esquire

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<sup>16</sup> *Monroe v. State*, 2006 WL 3482182, \*3 (Del. Dec. 4, 2006).

<sup>17</sup> The “interest of justice” exception of Rule 61(i)(4) has been narrowly defined to require the movant to show that the trial court lacked authority to convict or punish. *State v. Wright*, 653 A.2d 288, 298 (Del. Super. Ct. 1994).