

**SUPERIOR COURT  
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 N. KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801  
(302) 255-0669

STATE OF DELAWARE )  
 )  
 v. ) ID#: 9503004907  
 )  
 ANDRE A. RIVERA, )  
 )  
 Defendant. )

Submitted: September 19, 2003  
Decided: September 25, 2003

**ORDER**

**Upon Defendant's Second Motion for Postconviction Relief – *DENIED***

Defendant is serving a mandatory, "Subsection b," life sentence under Delaware's habitual offender statute.<sup>1</sup> Defendant's conviction was affirmed on direct appeal in 1996.<sup>2</sup> His first motion for postconviction relief was denied in 1997.<sup>3</sup>

Defendant's latest motion for postconviction relief is based on two

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<sup>1</sup> DEL. CODE ANN. tit. 11, §4214(b) (1995).

<sup>2</sup> *Rivera v. State*, 676 A.2d 906 (Del. 1996).

<sup>3</sup> *State v. Rivera*, 1997 WL 528275 (Del. Super.).

grounds. First, Defendant argues that the recent decision in *Crosby v. State*<sup>4</sup> retroactively applies to this case and is controlling. Defendant's second argument is that his fingerprint identification used at his trial was tainted. Defendant now claims that the police matched the fingerprint found at the scene with someone else's known fingerprint.

After preliminary consideration under Superior Court Criminal Rule 61(d), the court called for the State's response under Rule 61(f). The court allowed expansion of the record under Rule 61(g) to address Defendant's claims about the fingerprint misidentification.

As called for, the State provided a helpful response, including an affidavit from a fingerprint examiner who caused Defendant to be refingerprinted and who then compared Defendant's recently obtained, known fingerprints against the unknown fingerprint evidence used against Defendant at this trial. The fingerprints still match.

By order dated August 19, 2003, under Rule 61(f)(3), Defendant was given thirty days to reply to the State's response. He did not respond.

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<sup>4</sup> 824 A.2d 894 (Del. 2003).

## I.

The State is correct that Defendant's motion is procedurally barred. Beyond the several, technical ways that the petition is barred under Rule 61(i), the substantive point is that *Crosby* does not apply retroactively and, even if it did, it does not cover the sentence imposed on Defendant. *Crosby* concerns a non-mandatory, "Subsection (a)" sentence. In this case, the court exercised no discretion when it sentenced Defendant. The sentence Defendant received was required by law. And, Defendant's situation falls in line with federal and state cases upholding mandatory life sentences for habitual offenders.

The court remains sympathetic to Defendant's plight. Mr. Rivera was a drug addict who broke into someone's home to support his habit by theft. Based on his record of having done similar things in the past, Defendant must now spend the rest of his life in prison. As much as Defendant obviously deserved a long prison sentence for what he did, it is arguable that a mandatory life sentence is harsh. Nevertheless, Defendant was convicted by a jury of a crime that, when coupled with his criminal history, made him subject to sentencing under §4214(b). The General Assembly has considered the matter and it insists on the sentence that Defendant received.

For the foregoing reasons, after considering the parties' submissions and the expanded record, Defendant's July 2, 2003 motion for postconviction relief is **DENIED**. The court appreciates the State's serious approach to this important matter. Rather than stand on technicalities, albeit valid technicalities, the State addressed Defendant's claim of misidentification substantively.

**IT IS SO ORDERED.**

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Judge

oc: Prothonotary  
pc: Paul Wallace, Deputy Attorney General  
James Bayard, Esquire  
Andre A. Rivera