

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

STATE OF DELAWARE,	)	
	)	
v.	)	
	)	DEF. I.D.: 0511011555
VERLIN J. ALEXANDER,	)	CR.A.NOS.: IN06-01-1502
	)	
Defendant.	)	

Date Submitted: March 25, 2008  
Date Decided: June 12, 2008

*Upon Consideration of  
Defendant's Pro Se Motion for Postconviction Relief.*  
**DENIED.**

**ORDER**

This 12th day of June, 2008, upon consideration of the Motion for post-conviction relief brought by Defendant, Verlin J. Alexander ("Defendant"), it appears to the Court that:

1. On January 23, 2006, Defendant was indicted on three counts of Rape in the First Degree. He was committed to the Department of Corrections in default of bail on October 27, 2006. On June 19, 2007, Defendant was tried by a jury, but the trial resulted in a mistrial because the jury was unable to reach a unanimous verdict. Although a second trial was scheduled, Defendant entered a plea of no contest to

Rape in the Third Degree prior to trial and the State agreed to dismiss the other charges. Defendant was sentenced to twenty years in prison, suspended after serving ten years for a period of probation.

2. Defendant filed this *pro se* motion for postconviction relief on March 25, 2008. He raises two grounds for relief based upon constitutional violations. He contends that: (1) his constitutional right to a speedy trial was violated; and (2) counsel was ineffective for failing to file a motion seeking dismissal of the indictment based upon the violation of his right to a speedy trial.

3. Before addressing the merits of any motion for postconviction relief, the Court must first determine whether the claims pass through the procedural filters of Superior Court Criminal Rule 61 ("Rule 61"). To protect the integrity of the procedural rules, the Court will not address the substantive aspects of the claims if Defendant's claims are procedurally barred.<sup>1</sup> Rule 61 imposes four procedural imperatives on Defendant's motion: (1) the motion must be filed within one year of a final order of conviction; (2) any basis for relief must have been asserted previously in any prior postconviction proceedings; (3) any basis for relief not asserted in the proceedings below as required by the court rules is subsequently barred unless

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<sup>1</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990)(It is well-settled that the Superior Court and this Court must address the procedural requirements of Rule 61 before considering the merits of this motion).

defendant can show cause and prejudice; and (4) any ground for relief must not have been formerly adjudicated in any proceeding unless warranted in the interest of justice. Under Rule 61(i)(5), a defendant may avoid the first three procedural imperatives if the claim is jurisdiction or is “a colorable claim that there was a miscarriage of justice because of a constitutional violation.”<sup>2</sup>

4. Defendant’s claim that his constitutional right to a speedy trial was violated is procedurally barred under Rule 61(i)(4) because it was “formerly adjudicated” prior to the entry of Defendant’s plea. It appears from the docket sheet that Defendant filed a motion to dismiss the indictment on July 12, 2007, *pro se*, based upon grounds similar to those raised in this motion.<sup>3</sup> While the motion was filed *pro se* and not by Defendant’s counsel, it addressed in some detail the factual and legal bases for the motion and was considered by the Court. An order denying Defendant’s motion was issued on July 20, 2007.<sup>4</sup> Furthermore, Defendant did not seek an appeal of the order and waived his rights to do so by accepting a plea.

5. Defendant’s ineffective assistance of counsel claim fails for the same reason - the issue regarding Defendant’s right to a speedy trial was brought before the

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<sup>2</sup>SUPER. CT. CRIM. R. 61(i)(5).

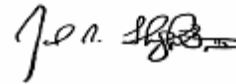
<sup>3</sup>Docket Item (“D.I.”) 44.

<sup>4</sup>D.I. 45.

Court. The Court considered, and ultimately denied, this motion.<sup>5</sup> Defendant cannot prevail on an ineffective assistance of counsel claim because the motion he claims his attorney should have filed was, in fact, filed and considered by the Court.

6. Based upon the foregoing, Defendant's motion for postconviction relief and request for court appointed counsel are **DENIED**.

**IT IS SO ORDERED.**



Judge Joseph R. Slights, III

Original to Prothonotary

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<sup>5</sup>D.I. 44.