

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cr. ID. No. 1107001026
	)	
CHRISTOPHER H. WEST,	)	
	)	
Defendant.	)	
	)	

Submitted: November 12, 2013

Decided: December 12, 2013

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT  
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF  
SHOULD BE DENIED  
AND  
COUNSEL’S MOTION TO WITHDRAW SHOULD BE GRANTED.**

Kathryn S. Keller, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for the State.

Albert J. Roop, V, Esquire and Patrick Collins, Esquire, 8 East 13<sup>th</sup> Street, Wilmington,  
Delaware, 19801, Attorney for Defendant Dontay J. Harris.

PARKER, Commissioner

This 12th day of December, 2013, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

**BACKGROUND AND PROCEDURAL HISTORY**

1. On August 15, 2011, Defendant Christopher H. West was indicted on four charges. Defendant West was charged with Robbery First Degree arising out of a bank robbery committed at the Citizen's Bank located inside the Acme grocery store located at 1308 Centerville Road, Wilmington, Delaware, on or about June 28, 2011. Defendant was charged with Robbery First Degree arising out of a bank robbery committed at the Wells Fargo Bank located at 2011 Concord Pike, Wilmington, Delaware, on or about July 1, 2011. Defendant was charged with Robbery Second Degree arising out of a bank robbery committed at a PNC Bank branch located at 2203 Kirkwood Highway, on or about June 30, 2011. Finally, Defendant was charged with Attempted Robbery First Degree arising out of an attempted bank robbery at the TD Bank located at 4010 Concord Pike, Wilmington, Delaware, which occurred on or about July 1, 2011.

2. On January 9, 2012, Defendant West pled guilty to two of the charges: Robbery First Degree and Robbery Second Degree.<sup>1</sup> As part of the plea agreement, the other two charges of Robbery First Degree and Attempted Robbery First Degree were dismissed by the State.

3. As part of the plea agreement, the parties agreed that the State would seek to declare Defendant a habitual offender under 11 *Del. C.* § 4214(a) on the Robbery First Degree charge. The parties agreed that the State would recommend the minimum/mandatory sentence of 25 years on that charge. The parties agreed that

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<sup>1</sup> January 9, 2012 Plea Agreement- Superior Court Docket No. 13.

Defendant would not contest his eligibility to be sentenced as a habitual offender. Defendant agreed that his convictions for Burglary Second in 2003, Forgery Second in 2004 and Forgery in Pennsylvania in 2009, made him eligible to be sentenced as a habitual offender.<sup>2</sup> The parties agreed that on the Robbery Second Degree charge the State would recommend a sentence of 5 years at Level V, suspended for 18 months at Level III probation.<sup>3</sup>

4. On March 30, 2012, Defendant was sentenced on the Robbery First Degree charge as a habitual offender pursuant to 11 *Del. C.* § 4214(a), and was sentenced to the minimum mandatory 25 years at Level V. On the Robbery Second Degree charge, Defendant was sentenced to 3 years at Level V, suspended for 3 years at Level IV, suspended after 6 months at Level IV for 2 years at Level III.

5. Defendant did not file a direct appeal to the Delaware Supreme Court.

### **FACTS**

6. The charges at issue stem from three separate bank robberies and one bank robbery attempt, all of which were committed within the span of less than a week. Based on video surveillance and the description of the suspect from the witnesses to the bank robberies, a photo array was generated. Delaware State Police showed the array to three people, all of whom identified Defendant West as the perpetrator of the robbery.

7. There was a witness from the Citizens Bank robbery who observed the suspect using a dark colored Jeep Wrangler that identified Defendant West as the suspect. In addition to being identified by the witness as the bank robber, the vehicle identified as being driven by the bank robber, a dark colored Jeep Wrangler, matched the description

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<sup>2</sup> January 9, 2012 Plea Agreement- Superior Court Docket No. 13.

<sup>3</sup> *Id.*

of the vehicle Defendant West drove.<sup>4</sup> In fact, Defendant West admitted to having committed the Citizen's Bank bank robbery and having driven a Jeep Wrangler to Citizen's Bank when he committed the bank robbery.<sup>5</sup>

8. Defendant West was also identified as the bank robber by the assistant manager at the Citizens Bank who was working at the time of the robbery. The teller from the PNC bank robbery also identified Defendant West as the person who committed the PNC robbery.<sup>6</sup>

9. Defendant's uncle also confirmed that the photo released from the Citizen's Bank robbery depicting the suspect was his nephew, Defendant West.<sup>7</sup>

10. Defendant West, when interviewed by the police, confessed to committing the three bank robberies and the attempted bank robbery.<sup>8</sup>

#### **RULE 61 MOTION AND COUNSEL'S MOTION TO WITHDRAW**

11. On February 27, 2013, Defendant filed a *pro se* motion for postconviction relief. In Defendant West's *pro se* motion, he claimed that his plea was not knowing, intelligent and voluntary for a variety of reasons. Defendant also claimed that his conviction in 2009 in Pennsylvania for Forgery was "illegal" and should not have been used as a predicate conviction to support his habitual offender status.

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<sup>4</sup> Detective Christian M. Brown's Affidavit of Probable Cause, attached as Exhibit H to Defendant West's Postconviction Counsel's Motion to Withdraw; Defendant West's July 5, 2011 Statement, at pgs. 55-56, attached as Exhibit I to Defendant West's Postconviction Counsel's Motion to Withdraw.

<sup>5</sup> Defendant West's July 5, 2011 Statement, at pgs. 55-58, 64, attached as Exhibit I to Defendant West's Postconviction Counsel's Motion to Withdraw.

<sup>6</sup> Detective Christian M. Brown's Affidavit of Probable Cause, attached as Exhibit H to Defendant West's Postconviction Counsel's Motion to Withdraw.

<sup>7</sup> Detective Christian M. Brown's Affidavit of Probable Cause, attached as Exhibit H to Defendant West's Postconviction Counsel's Motion to Withdraw.

<sup>8</sup> Defendant West's July 5, 2011 Statement, attached as Exhibit I to Defendant West's Postconviction Counsel's Motion to Withdraw, pgs. 53-73.

12. Defendant was thereafter assigned counsel. On November 12, 2013, assigned counsel filed a Motion to Withdraw as Postconviction Counsel pursuant to Superior Court Criminal Rule 61(e)(2), accompanied by a memorandum of law in support thereof.

13. Superior Court Criminal Rule 61(e)(2) provides that:

If counsel considers the movant's claim to be so lacking in merit that counsel cannot ethically advocate it, and counsel is not aware of any other substantial ground for relief available to the movant, counsel may move to withdraw. The motion shall explain the factual and legal basis for counsel's opinion and shall give notice that the movant may file a response to the motion within 30 days of service of the motion upon the movant.

14. In the motion to withdraw with supporting memorandum of law, Defendant's Rule 61 counsel represented to the court that, after undertaking a thorough analysis of the Defendant's claims, counsel has determined that all the claims are so lacking in merit that they cannot ethically advocate any of them.<sup>9</sup> Counsel further represented that, following a thorough review of the record, they were not aware of any other substantial claim for relief available to Defendant West.<sup>10</sup> Defendant's Rule 61 counsel represented to the court that there are no potential meritorious grounds on which to base a Rule 61 motion and have therefore sought to withdraw as counsel.<sup>11</sup>

15. Defendant's Rule 61 counsel advised Defendant of their motion to withdraw<sup>12</sup> and Defendant responded thereto.<sup>13</sup> Defendant responded that after reviewing his counsel's motion to withdraw, he still desires to pursue "two points" raised in his initial *pro se* motion. He still desires to pursue his claim that the 2009 forgery conviction in

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<sup>9</sup> See, Superior Court Docket No. 52- Defendant's Rule 61 counsel's Motion to Withdraw with Supporting Memorandum of Law.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See, Superior Court Docket No. 50.

<sup>13</sup> Superior Court Docket No. 52- Exhibit L to Defendant's Rule 61 counsel's motion to withdraw.

Pennsylvania should not have been used as a predicate felony conviction to support his status as a habitual offender pursuant to 11 *Del. C.* § 4214(a). In addition, Defendant desires to pursue his claim that his plea was not entered into knowingly, intelligently and voluntarily because he was not in the right state of mind when he accepted the plea and because the prison conditions prevented him from being able to make a knowing decision.<sup>14</sup>

16. In order to evaluate Defendant's Rule 61 motion, and to determine whether Defendant's Rule 61 counsel's motion to withdraw should be granted, the court should be satisfied that Rule 61 counsel made a conscientious examination of the record and the law for claims that could arguable support Defendant's Rule 61 motion. In addition, the court should conduct its own review of the record in order to determine whether Defendant's Rule 61 motion is so totally devoid of any, at least, arguable claims.<sup>15</sup>

**DEFENDANT'S PLEA WAS KNOWING, INTELLIGENT AND VOLUNTARY**

17. On January 9, 2012, the trial court engaged in a plea colloquy to determine whether Defendant's decision to accept the plea offer was knowing, intelligent and voluntary.<sup>16</sup>

18. During the plea colloquy, Defendant's counsel, Bradley V. Manning, Esquire, represented to the court that he had discussed the facts of the case and also discussed the State's plea offer with Defendant West.<sup>17</sup> Defendant's counsel represented that Defendant had been evaluated by a psycho forensic evaluator from the Public Defender's office. Defendant had a competency evaluation performed. Defendant's counsel

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<sup>14</sup> *Id.*

<sup>15</sup> See, for example, *Roth v. State of Delaware*, 2013 WL 5918509, at \*1 (Del. 2013)(discussing standard to be employed when deciding counsel's motion to withdraw on a defendant's direct appeal.).

<sup>16</sup> See, January 9, 2012 Plea Transcript.

<sup>17</sup> January 9, 2012 Plea Transcript, at pgs. 3-4.

represented that he had met with Defendant West on a number of occasions. That Defendant was on prescription medication while in prison and counsel believed that Defendant West was doing well.<sup>18</sup>

19. Defense counsel further represented that Defendant was able to understand and comprehend everything that they discussed and, in fact, Defendant asked his counsel intelligent questions. Therefore, Defendant's trial counsel believed that Defendant was entering into his plea knowingly, intelligently and voluntarily and that the plea should be accepted.<sup>19</sup>

20. During the plea colloquy, Defendant West represented to the court that he understood everything that his counsel represented to the court.<sup>20</sup>

21. During the plea colloquy, the court asked Defendant West about the medications he was taking.

THE COURT: You're taking some medications right now?

MR. WEST: Yes, I am.

THE COURT: What are you taking?

MR. WEST: Wellbutrin, lithium and Risperdal.

THE COURT: Are those medications you take when you're not in custody?

MR. WEST: Somewhat.

THE COURT: Okay. Do you feel well enough to proceed to enter a plea today?

MR. WEST: Yes, I do.

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<sup>18</sup> January 9, 2012 Plea Transcript, at pgs. 3-4.

<sup>19</sup> January 9, 2012 Plea Transcript, at pgs. 3-4.

<sup>20</sup> January 9, 2012 Plea Transcript, at pg. 5.

THE COURT: **And you've understood everything that Mr. Manning has represented to the Court?**

MR. WEST: **Yes, I do.**<sup>21</sup>

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THE COURT: Other than what we've discussed in terms of your medications, are you under the influence of any drugs or alcohol?

MR. WEST: No, I'm not.

THE COURT: **Are you freely and voluntarily pleading guilty to these charges?**

MR. WEST: **Yes, I am.**<sup>22</sup>

22. In addition to Defendant's representations discussed above, during the plea colloquy, Defendant West represented to the court that he had carefully read and understood all the information in the truth-in sentencing guilty plea form and the plea agreement, and that he reviewed the documents with his counsel.<sup>23</sup> Defendant represented that all his answers in the truth-in sentencing guilty plea form and the plea agreement were truthful.<sup>24</sup>

23. The court inquired a second time as to whether Defendant was certain that he had answered all the questions truthfully after reading them carefully.<sup>25</sup> To which Defendant responded: "Yes, I am."<sup>26</sup> The court then inquired as to whether Defendant West had any questions or concerns, to which Defendant responded: "No, I don't."<sup>27</sup>

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<sup>21</sup> January 9, 2012 Plea Transcript, at pg. 5 (emphasis added).

<sup>22</sup> January 9, 2012 Plea Transcript, at pg. 9.

<sup>19</sup> January 9, 2012 Plea Transcript, at pgs. 5-6, 11.

<sup>24</sup> January 9, 2012 Plea Transcript, at pgs. 5-6.

<sup>25</sup> January 9, 2012 Plea Transcript, at pg. 11.

<sup>26</sup> January 9, 2012 Plea Transcript, at pg. 11.

<sup>27</sup> January 9, 2012 Plea Transcript, at pg. 11.



24. Defendant represented that nobody was forcing him to enter his plea. Defendant represented that he was freely and voluntarily pleading guilty to the charges listed in the plea agreement. Defendant represented that he was not being threatened or forced to do so by his attorney, by the State, or by anyone else.<sup>28</sup> Moreover, Defendant represented that he had not received any promises by anyone as to what his sentence would be.<sup>29</sup>

25. Defendant also acknowledged his guilt and acknowledged that he was voluntarily pleading guilty to the two charges.<sup>30</sup> Defendant represented to the court that he understood the trial and appellate rights he was giving up by pleading guilty but that he desired to give up those rights and enter his guilty plea rather than go forward with the trial.<sup>31</sup>

26. Based on Defendant's representations during the plea colloquy, the court found that Defendant's plea was knowingly, intelligently and voluntarily given, and the court accepted the plea.<sup>32</sup>

#### **DEFENDANT'S RULE 61 MOTION IS WITHOUT MERIT**

27. Defendant desires to pursue two claims. First, Defendant claims that his plea was not knowingly, intelligently and voluntarily given because he was on medication and not in the right state of mind and also because the prison conditions impeded his ability to confer with his counsel and to otherwise make a knowing and voluntary decision regarding his plea. Second, Defendant contends that his 2009 forgery conviction in Pennsylvania should not have been used as a predicate felony conviction on which to

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<sup>28</sup> January 9, 2012 Plea Transcript, at pgs. 9-10; Truth-In-Sentencing Guilty Plea Form dated January 9, 2012.

<sup>29</sup> January 9, 2012 Plea Transcript, at pg. 11.

<sup>30</sup> January 9, 2012 Plea Transcript, at pgs. 7-8.

<sup>31</sup> January 9, 2012 Plea Transcript, at pgs. 9-11.

<sup>32</sup> January 9, 2012 Plea Transcript, at pg. 11.

base his habitual offender status because it was an “illegal” conviction because he was not given the right to confront witnesses.

28. Turning first to Defendant’s claim that his plea was not entered into knowingly, intelligently and voluntarily, this claim is belied by the representations Defendant, himself, made to the court at the time he accepted the plea.

29. A defendant is bound by his answers on the plea form and by his testimony at the plea colloquy in the absence of clear and convincing evidence to the contrary.<sup>33</sup> In this case, the Truth-in-Sentencing Form and plea colloquy reveal that Defendant knowingly, voluntarily and intelligently entered a guilty plea to the charges for which he was sentenced.

30. Defendant has not presented any clear, contrary evidence to call into question his prior testimony at the plea colloquy or answers on the Truth-In Sentencing Guilty Plea Form. As confirmed by the plea colloquy and the Truth-In Sentencing Guilty Plea Form, the court ensured that Defendant West understood the terms of plea agreement and the truth-in-sentencing guilty plea form. Defendant represented to the court that he understood the rights he was waiving and the consequences he faced as a result of his guilty plea.

31. Defendant represented to the court that he was of sound mind to accept the plea and then demonstrated that fact to the court with his responses to the court’s inquiries. In fact, at one point during the plea colloquy, Defendant advised the court that while he and his counsel had reviewed the plea agreement and the truth-in-sentencing guilty plea form,

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<sup>33</sup> *State v. Harden*, 1998 WL 735879, \*5 (Del. Super.); *State v. Stuart*, 2008 WL 4868658, \*3 (Del. Super. 2008).

they had not reviewed the indictment.<sup>34</sup> Because Defendant had not reviewed the indictment with his counsel, the court allowed Defendant to confer with counsel so that the indictment could be reviewed. Following Defendant's conference with his counsel, the court confirmed that the Defendant had reviewed the indictment with his counsel.<sup>35</sup>

32. Defendant showed that he had the presence of mind to know that he had not reviewed his indictment with trial counsel prior to his plea but that he had reviewed the Plea Agreement and Truth-in-Sentencing Guilty Plea Form with counsel. He did not complain about trial counsel's performance in any other respect. He heard counsel's representations to the court that they had met on a number of occasions and had discussed the facts of the case and the plea offer, and confirmed to the court that he understood those representations. He informed the court that he understood the plea and its consequences. Defendant is bound by these representations. The record reflects that Defendant entered his plea knowingly, intelligently and voluntarily.

33. In addition to Defendant's own representations, prior to Defendant's plea, Defendant's trial counsel filed a motion to have Defendant undergo a mental health examination. The motion was granted and Defendant underwent a mental health evaluation.<sup>36</sup> The examiner was aware that Defendant was taking Wellbutrin, Lithium and Risperdal at the time of the examination and found that the medications did not impede Defendant's capacity to understand his case or assist trial counsel.<sup>37</sup> Defendant West was found to be competent to stand trial.<sup>38</sup> It was also determined that none of

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<sup>34</sup> January 9, 2012 Plea Transcript, at pgs. 6-7.

<sup>35</sup> *Id.*

<sup>36</sup> Superior Court Docket No. 10.

<sup>37</sup> Delaware Psychiatric Center Forensic Mental Health Examination, attached as Exhibit J to Defendant's Postconviction Counsel's Motion to Withdraw, at pg. 3.

<sup>38</sup> Delaware Psychiatric Center Forensic Mental Health Examination, attached as Exhibit J to Defendant's Postconviction Counsel's Motion to Withdraw, at pg. 13.

Defendant's mental diagnoses impeded his ability to understand his case or assist trial counsel.<sup>39</sup>

34. Finally, the evidence against Defendant was overwhelming. Defendant committed three robberies and one attempted robbery, and admitted to having done so. Defendant faced significantly more Level V time if he had taken his case to trial and been convicted of all four charges and could have been sentenced to life imprisonment. Instead, in exchange for accepting responsibility, the State agreed to recommend 25 years at Level V on his Robbery First Degree conviction. Defendant represented to the court that he was aware of all his trial and appellate rights, and that he was entering into the plea rather than going forward with the trial, because it was in his best interests to do so.<sup>40</sup>

35. Since Defendant's plea was entered into voluntarily, intelligently and knowingly, Defendant waived his right to challenge any alleged errors or defects occurring prior to the entry of his plea, even those of constitutional proportions.<sup>41</sup> The claims that Defendant seeks to raise in his Rule 61 motion were waived when Defendant voluntarily entered his plea. Indeed, Defendant's present contention that his plea was not voluntary stems from allegations of defects, errors, misconduct and deficiencies which occurred prior to the entry of the plea, and were waived when Defendant knowingly, freely and intelligently entered his plea.

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<sup>39</sup> Delaware Psychiatric Center Forensic Mental Health Examination, attached as Exhibit J to Defendant's Postconviction Counsel's Motion to Withdraw, pg. 13.

<sup>40</sup> January 9, 2012 Plea Transcript, at pg. 10.

<sup>41</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Modjica v. State*, 2009 WL 2426675 (Del. 2009); *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2004).

36. All of Defendant's claims were waived when he knowingly, voluntarily and intelligently entered into his plea. Defendant's claim that his plea was not entered into knowingly, voluntarily and intelligently is without merit.

37. Turning now to Defendant's claim that his 2009 conviction for Forgery in Pennsylvania should not have been used as a predicate felony conviction for his habitual offender status in this action. Defendant claims that the 2009 conviction for forgery in Pennsylvania was "illegal" because he did not have the right to confront witnesses. This claim is also without merit.

38. First, the terms of the plea agreement required that Defendant agree that he was eligible for sentencing as a habitual offender due to his forgery conviction in 2009 in Pennsylvania as well as his Delaware convictions for Burglary Second in 2003, and for Forgery Second in 2004.<sup>42</sup>

39. Second, during the plea colloquy, the State represented to the court that the terms of the plea agreement required Defendant to agree that he was eligible to be sentenced as a habitual offender due to his forgery conviction in 2009 in Pennsylvania, along with his Burglary Second conviction in 2003 and his Forgery Second conviction in 2004.<sup>43</sup> Defendant's trial counsel also represented to the court during the plea colloquy that Defendant understood that the terms of the plea offer provided that he was to be sentenced as a habitual offender on the Robbery First Degree charge.<sup>44</sup> Defendant West represented to the court that he understood everything that his counsel represented to the court.<sup>45</sup> The court made sure that Defendant understood that the State was going to

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<sup>42</sup> January 9, 2012 Plea Agreement.

<sup>43</sup> January 9, 2012 Plea Transcript, at pg. 3.

<sup>44</sup> January 9, 2012 Plea Transcript, at pg. 3-4.

<sup>45</sup> January 9, 2012 Plea Transcript, at pg. 5.

recommend that he be sentenced as a habitual offender and that he was required to agree that he was eligible to be sentenced as a habitual offender because of his conviction for Forgery in 2009 in Pennsylvania along with his conviction in 2003 for Burglary Second and his conviction in 2004 for Forgery Second.<sup>46</sup> Defendant advised the court that he understood.<sup>47</sup>

40. Next, as a matter of law, predicate convictions are not subject to collateral attack unless, in the original proceedings, the convictions are void because the court lacked jurisdiction or the defendant was unrepresented.<sup>48</sup> As a general rule, judgments rendered by a court having jurisdiction of the parties and subject matter may not be attacked as invalid in any collateral proceeding. A collateral attack is allowed only where the judgment is void, a void judgment being a judgment rendered without jurisdiction.<sup>49</sup>

41. The State filed a motion to declare Defendant a habitual offender.<sup>50</sup> The records supporting Defendant's conviction in 2009 for Forgery in Pennsylvania were attached to the motion as Exhibit "C". The State's motion reflects that Defendant was represented by counsel, Joseph A. Ratasiewicz, Esquire, for the forgery charge in Pennsylvania. The records further reflect that the Court of Common Pleas, County of Chester, had jurisdiction since the allegations stemmed from conduct which occurred in Chester County, Pennsylvania. Finally, the records reflect that Defendant entered into a guilty plea on May 13, 2009, admitting to having committed the charge of forgery and waiving

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<sup>46</sup> January 9, 2012 Plea Transcript, at pg. 8.

<sup>47</sup> January 9, 2012 Plea Transcript, at pg. 8.

<sup>48</sup> *State v. Kamalski*, 429 A.2d 1315, 1320 (Del.Super. 1981); *Anderson v. State*, 2010 WL 3103400, at \*2 (Del.Super. 2010).

<sup>49</sup> *State v. Kamalski*, 429 A.2d 1315, 1320 (Del.Super. 1981).

<sup>50</sup> Superior Court Docket No. 36, at Exhibit C.

all of his trial and appellate rights associated with that charge, including his right to confront and cross-examine witnesses.<sup>51</sup>

42. Defendant's present claim that he was denied the right to confront witnesses and therefore his 2009 forgery conviction is illegal is without merit since he waived that right when he pled guilty to the charge.

43. The record reveals that Defendant had three prior felony convictions rendering him within the requirements of 11 *Del. C.* § 4214(a), Defendant signed the plea agreement agreeing he was eligible for sentencing as a habitual offender, and the State dismissed additional charges in return for the agreement made. Defendant's claim that his 2009 conviction for Forgery in Pennsylvania should not have been used as a predicate felony conviction to base his habitual offender status because it was "illegal" is without merit.<sup>52</sup>

44. The court has reviewed the record carefully and has concluded that Defendant's Rule 61 motion is without merit and devoid of any other substantial claims for relief. The court is also satisfied that Defendant's Rule 61 counsel made a conscientious effort to examine the record and the law and has properly determined that Defendant does not have a meritorious claim to be raised in his Rule 61 motion.

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<sup>51</sup> Superior Court Docket N. 36- at Exhibit C.

<sup>52</sup> See, *State v. Brown*, 1994 WL 714010, at \*2 (Del. Super. 1994)(when the record reveals that defendant had the requisite three prior felony convictions rendering him within the requirements of 11 *Del.C.* § 4214(a), and the defendant signed his plea agreement agreeing he was eligible for sentencing as a habitual criminal and the State dismissed additional charges in return for the agreement made, defendant's Rule 61 challenge contesting his habitual offender status is without merit).

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied and Defendant's counsel's motion to withdraw should be granted.

**IT IS SO RECOMMENDED.**

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Commissioner Lynne M. Parker

oc: Prothonotary  
cc: Bradley V. Manning, Esquire