

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

STATE OF DELAWARE,	)	
	)	
	)	
v.	)	ID#: 9606009907
	)	
WILLIAM T. JOHNSON, JR.,	)	
Defendant.	)	

**ORDER**

**Upon Defendant’s Second Motion for Postconviction Relief –  
SUMMARILY DISMISSED**

Twelve years ago, in 1996, Defendant pled guilty to felony theft and he was sentenced to a year of probation. Since then, he has filed a motion for postconviction relief, an appeal from its denial and, now, this second motion for postconviction relief. Thus, the hardest question presented here is: Why the bother?

As best as the court can determine, the felony theft conviction was used as a predicate for Defendant’s having been sentenced in 1998 to 20 years in prison, as a habitual offender under 11 *Del. C.* §4214(a), for armed robbery. (Defendant also received three years for the related weapons offense.) The court’s theory about why Defendant is pursuing postconviction relief in this case is unsatisfying in that the robbery sentence does not exceed the statutory maximum for the crime. In other

words, even if Defendant could knock-out the felony theft conviction here and, thereby, his habitual offender designation in the robbery case, it is unlikely that his robbery sentence will be reduced. Perhaps Defendant does not see it. In any event, for whatever reason, Defendant keeps challenging his 1996, felony theft conviction.

## I.

Regardless of why he filed it, Defendant's second motion fails for several reasons. First, Defendant lacks standing, considering that he can never serve time on this old case.<sup>1</sup> Second, the motion for postconviction relief is subject to summary dismissal, as was his first motion, because it is way too late.<sup>2</sup> Moreover, Defendant's claims are procedurally barred because they were presented in his first motion, or they should have been.<sup>3</sup>

After he pled guilty in 1996, Defendant accepted his conviction and suspended sentence without protest. He did not file a direct appeal. By not filing a direct appeal, Defendant, in effect, conceded that there was nothing procedurally or legally wrong about: his prosecution, guilty plea, conviction, and sentence.

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<sup>1</sup> *Ruiz v. State*, 2008 WL 1961187 (Del. May 7, 2008)(collecting Delaware cases).

<sup>2</sup> Super. Ct. Crim. R. 61(i)(1).

<sup>3</sup> Super. Ct. Crim. R. 61(i)(2).

Defendant first raised questions when he filed for postconviction relief eight years later, in 2004. Then, he claimed that his theft did not rise to the statutory, felony threshold. He also challenged his lawyer's effectiveness. The court summarily dismissed the motion and the dismissal was affirmed.<sup>4</sup>

This time, Defendant again claims ineffectiveness of counsel. Again, he questions the legality of his conviction for a felony, claiming the State improperly combined the bad checks he wrote to Sears in order to clear the felony theft threshold. Meanwhile, when he pleaded guilty, Defendant admitted that he acted "pursuant to a common scheme," with intent to take more than the then-required felony threshold amount, \$500. Thus, no matter what, Defendant cannot show unfair prejudice.

## II.

Defendant has shown neither cause nor prejudice for his procedural defaults.<sup>5</sup> And so, this motion is procedurally barred. In passing, the court also observes that the motion lacks merit. This assumes that Defendant had standing to bring this motion, which he did not. Therefore, after preliminary

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<sup>4</sup> *State v. Johnson*, 2004 WL 2745617 (Del. Super. Nov. 9, 2004), *aff'd*, *Johnson v. State*, 875 A.2d 632 (Del. 2005) (TABLE).

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

review, Defendant's second motion for postconviction relief is **SUMMARILY DISMISSED**. If Defendant files a third motion, the court will review it and dismiss for the lack of standing, without further comment or explanation. The court will not waste more time on a case that was closed in the 1990's.

**IT IS SO ORDERED.**

Date: August 29, 2008

/s/ Fred S. Silverman

Judge

PC: Prothonotary (Criminal Division)  
Diane Walsh, Deputy Attorney General  
William T. Johnson, Jr.