

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

STATE OF DELAWARE,                    )  
  )  
                  Plaintiff,                    )  
  )  
                  v.                            )     Cr. ID No. 0509010302A  
  )  
DWAYNE A. WALKER,                    )  
  )  
                  Defendant.                )

Submitted: May 23, 2008  
Decided: June 5, 2008

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

1. On May 23, 2008, Defendant filed this, his second motion for postconviction relief.
2. Under Superior Court Criminal Rule 61(d)(1), the Prothonotary referred the petition appropriately. The judge who accepted the plea has retired.
3. The petition is not on the form required by Rule 61(b)(1). Nevertheless, the court has given it preliminary consideration under Rule 61(d)(1). For the reasons presented below, the petition is subject to summary dismissal under Rule 61(d)(4).
4. Although the petition is extensive, Defendant’s claims fall into two categories: his plea agreement was unfulfilled because the sentence exceeded the

State's recommendation, and Defendant allegedly received ineffective assistance of counsel at sentencing.

5. The petition is procedurally barred for several reasons under Rule 61(i):

A. It is untimely under Rule 61(i)(1) because it was filed more than one year after the judgment of conviction became final when Defendant was sentenced on September 8, 2006.

B. The claims about ineffective assistance of counsel are barred by Rule 61(i)(2) because they were not asserted in Defendant's first motion for postconviction relief, filed on April 3, 2007, as required by subdivision (d)(2) of Rule 61. Other than conclusory statements by Defendant, consideration of the claim is not warranted by the record, in the interest of justice. Furthermore, it is unlikely that Defendant's counsel could have done anything to convince the court to impose a shorter sentence. It is also unlikely that the court would have allowed Defendant to withdraw the guilty plea. And if it did, Defendant probably would have wound-up with an even longer sentence.

C. The claims about the unfulfilled plea agreement are barred by Rule 61(i)(4) because they were formally adjudicated in the first postconviction proceeding. Moreover, Defendant's appeal from the 2007 denial of postconviction relief was dismissed.<sup>1</sup>

6. Although Defendant has attempted to invoke Rule 61(i)(5) to knock out the bars to relief in Rule 61 (i)(1) and (2), as discussed above, Defendant's plea and sentence do not amount to a miscarriage of justice in any sense. While on probation for drug offenses, Defendant murdered a man by stabbing him in the heart.

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<sup>1</sup> *State v. Walker*, 2007 WL 1098146 (Del. Super. Apr. 11, 2007) *appeal dismissed*, 929 A.2d 785 (Del. 2007) .

According to a witness, the murder was drug-related. The court did not impose a maximum sentence. Also, it did not sentence Defendant for the probation violations. When Defendant pleaded guilty, he undeniably expected a long prison sentence. The fact that the actual sentence was even longer than Defendant anticipated, but not as long as it could have been, does not come close to establishing a miscarriage of justice taking the crime and Defendant's status into account.

For the foregoing reasons, it plainly appears from the motion and the record that Defendant is not entitled to relief. Therefore, Defendant's second motion for postconviction relief is **SUMMARILY DISMISSED**. The Prothonotary shall notify Defendant.

**IT IS SO ORDERED.**

/s/ Fred S. Silverman

Judge

cc: Prothonotary  
Gregory M. Johnson, Esquire  
Diane Walsh, Esquire