

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

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|------------------------|---|-------------------|
| STATE OF DELAWARE, |) | |
| |) | |
| v. |) | I.D. # 0408022871 |
| |) | |
| |) | |
| PEJANNIS J. HERNANDEZ, |) | |
| |) | |
| Defendant. |) | |

ORDER

AND NOW TO WIT, this 3rd day of December, 2008, the Court having heard and duly considered Defendant’s *pro se* Motion for Postconviction Relief, **IT IS HEREBY ORDERED THAT:**

1. Pejannis J. Hernandez (“Defendant”) has filed this motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). For the reasons stated below, Defendant’s motion is **DENIED**.

2. On December 12, 2005 Defendant pled guilty to Trafficking in Cocaine and Conspiracy Second Degree pursuant to a plea agreement with the State. As to the Trafficking charge, Defendant was sentenced to 10 years at Level V, suspended after the mandatory minimum of 4 years¹ for 18

¹ 16 Del. C. § 4753A(2)(b).

months at Level III. As to the Conspiracy charge, Defendant was sentenced to 2 years at Level V, suspended immediately for 18 months at Level III.²

3. On February 21, 2006, Defendant filed a motion, *pro se*, to modify/reduce his sentence pursuant to Superior Court Criminal Rule 35 (“Rule 35”).³ This Court denied Defendant’s motion because the sentence was: (1) “imposed pursuant to a Plea Agreement between the State and the defendant and signed by the defendant”; (2) “mandatory and cannot be reduced or suspended”; and (3) “appropriate for all the reasons stated at the time of sentencing. No additional information has been provided to the Court which would warrant a reduction or modification of this sentence.”⁴

4. On September 26, 2006, this Court granted Defendant’s request to participate in the Treatment Accountability for Safer Communities (TASC) program and amended Defendant’s Sentencing Order accordingly.⁵

5. On December 12, 2006 Defendant filed a *pro se* motion to modify his sentence pursuant to Rule 35(b). This Court denied this motion for the reasons previously stated.⁶

² Sentencing Order, Dec. 12, 2005, Docket Item (“D.I.”) 40; *see also* D.I. 45.

³ D.I. 42.

⁴ Order, April 27, 2006, D.I. 46.

⁵ D.I. 49.

⁶ D.I. 51.

6. On July 12, 2007 Defendant filed another *pro se* motion to modify his sentence pursuant to Rule 35. This Court denied Defendant's motion as time-barred and repetitive.⁷

7. On August 22, 2008, Defendant filed this motion, *pro se*, to modify/reduce his sentence pursuant to Rule 61, which is now presently before the Court.⁸ Defendant raises three "grounds" for this Court to consider in his motion for postconviction relief.⁹ Defendant states that upon his future release from prison, he will be immediately detained by the Department of Immigration for six to twelve months while he is processed for deportation. Defendant asks this Court to suspend the remainder of his sentence so that he may begin the deportation process.¹⁰ Second, Defendant lists his participation and achievements in a number of rehabilitative programs, and provides character letters discussing his progress.¹¹ Lastly, Defendant explains that he will be guaranteed employment upon his deportation to the Dominican Republic. Defendant does not challenge the

⁷ D.I. 53.

⁸ D.I. 56.

⁹ Def.'s Mem. in Supp. of his Mot. for Postconviction Relief, D.I. 57.

¹⁰ *Id.*

¹¹ *Id.*

legality of his plea agreement, nor present any other legal grounds for relief.¹²

8. Prior to addressing the substantive merits of any claim for postconviction relief, the Court must first determine whether the defendant has met the procedural requirements of Rule 61.¹³ If the procedural requirements of Rule 61 are not met, in order to protect the integrity of the procedural rules, the Court should not consider the merits of a postconviction claim.¹⁴

9. A postconviction motion that is filed more than one year after judgment of conviction is procedurally time barred.¹⁵ For the purposes of this rule, a conviction is final thirty days after sentencing, unless a direct appeal is filed in that time frame.¹⁶ Defendant pled guilty and waived his

¹² See *Sullivan v. State*, 636 A.2d 931, 937 (Del. 1994):

Before accepting a guilty plea, the trial judge must address the defendant in open court. The judge must determine that the defendant understands the nature of the charges and the various penalties provided for the offenses. The judge must determine that the defendant understands the nature of the charges and the various penalties provided for the offenses. The record must reflect that the defendant understands that the guilty plea constitutes a waiver of a trial on the charges and the various constitutional rights to which he would have been entitled had he gone to trial. (Del. Super. Ct. R. 11(c)). The trial judge must also determine that a guilty plea is voluntary and not the result of force, threats, or promises apart from the plea agreement.

It should be noted that Defendant signed the guilty plea questionnaire in conjunction with his guilty plea. The questionnaire conspicuously states: “Non-Citizens: Conviction of a criminal offense may result in *deportation*, exclusion from the United States, or denial of naturalization” (emphasis added), D.I. 40.

¹³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990); see also *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

¹⁴ *State v. Gattis*, 1995 WL 790961, at *3 (Del. Super. Dec. 28, 1995) (citing *Younger*, 580 A.2d at 554).

¹⁵ Del. Super. Ct. Crim. R. 61(i)(1).

¹⁶ R. 61(m)(1).

right to file a direct appeal on December 12, 2005. Defendant's conviction therefore became final, for purposes of Rule 61, on January 11, 2006.

Defendant filed this motion on August 22, 2008, which is more than one year after his conviction became final. The motion is therefore procedurally time barred.

10. Repetitive motions are procedurally barred under Rule 61(i)(2).

The Rule states:

[a]ny ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim is warranted in the interest of justice.¹⁷

Rule 61(b)(2) requires that the contents of a postconviction motion:

shall specify all the grounds for relief which are available to the movant and of which the movant has or, by the exercise of reasonable diligence, should have knowledge, and shall set forth in summary form the facts supporting each of the grounds thus specified.¹⁸

Here, Defendant signed a plea agreement that explicitly stated that deportation was a potential consequence of his actions. Defendant therefore should have known that he could be facing an immigration detainer upon his release. This issue was not previously raised, and should have been, in one of Defendant's previous motions for postconviction relief.¹⁹ Since the

¹⁷ R. 61(i)(2).

¹⁸ R. 61(b)(2).

¹⁹ See *supra* note 11.

Defendant has also failed to offer any evidence that the “interest of justice” exception to Rule 61(i)(2) is applicable, the current motion for postconviction relief is procedurally barred as a repetitive motion.

11. Grounds for relief formerly adjudicated in a previous postconviction proceeding are procedurally barred under Rule 61(i)(4), “unless reconsideration of the claim is warranted in the interest of justice.”²⁰ The “interest of justice” exception has been narrowly construed to mean that “the trial court lacked the authority to convict or punish [the defendant].”²¹ Here, by outlining his rehabilitative progress and post-release career opportunities, Defendant is essentially repackaging his previous Rule 35 motions for modification/reduction of his sentence in the form of a Rule 61 motion.²² Defendant does not offer any evidence or argument that the “interest of justice” exception is applicable, let alone claim that this Court lacked authority to convict or punish him.²³ Therefore, his motion is also procedurally barred under Rule 61(i)(4).

²⁰ R. 61(i)(4).

²¹ *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990).

²² See *Marvel v. State*, 1996 WL 769629 (Del. Super. Dec. 11, 1996).

²³ *Riley v. State*, 585 A.2d 719, 721 (Del. 1990) (“Justice does not require that an issue that has been previously considered and rejected be revisited simply because the claim is refined or restated”); *State v. Dawson*, 2001 WL 491182 (Del. Super. April 12, 2001) (Ridgely, Pres. J.).

* * *

WHEREFORE, Defendant's motion for postconviction relief is **DENIED**.

IT IS SO ORDERED.

Jan. R. Jurden, Judge

cc: Prothonotary – original
Pejannis J. Hernandez, Defendant
Martin B. O'Connor, Esquire, Department of Justice