

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

STATE OF DELAWARE)	
)	
)	
)	
v.)	I.D. No. 9908026980
)	
JOHN C. JOHNSON,)	
)	
Defendant.)	
)	

Submitted: January 7, 2009
Decided: March 31, 2009

Upon Defendant's "Motion for Postconviction Relief."
DENIED.

Upon Defendant's "Motion for Default."
DENIED AS MOOT.

ORDER

Andrew J. Vella, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

John C. Johnson, James T. Vaughn Correctional Institution, Smyrna,
Delaware, *pro se*.

COOCH, J.

This 31st day of March, 2009, upon consideration of Defendant's Motion for Postconviction Relief and Motion for Default, it appears to the Court that:

1. On May 8, 2001, Defendant pled guilty to Murder Second Degree and Possession of Firearm During the Commission of a Felony. Defendant was sentenced on July 12, 2001 to 20 years level 5, suspended after serving 17 years level 5 for 3 years level 4 for the Murder Second Degree conviction and 10 years level 5 for the Possession of a Firearm During the Commission of a Felony conviction.

2. Defendant filed this *pro se* first motion for postconviction relief on May 9, 2008. Defendant alleges five grounds for relief, three of which are essentially ineffective assistance of counsel claims. The remaining two claims are related to prosecutorial misconduct and sentencing. In his motion, Defendant alleges:

Ground one: Ineffective Assistance of Counsel
Movant claims he was denied effective assistance of counsel in every stage of criminal proceedings in violation of his 6th and 14th amendment rights!

Ground two: Coerced Guilty Plea
Movant claims he was illegally coerced and forced into taking an illegal guilty plea which violates his 6th and 14th Amendment rights!

Ground three: Prosecutor's Misconduct [*sic*]
Movant claims Prosecution showed misconduct by denying the defendant his 6th and 14th Amendment right to confront the evidence used to Prosecute, and the right to a fair trial before an impartial jury, which violates due process of law.

Ground four: Illegal Sentence

Movant claims he was illegally declared an habitual offender of Title 11 § 4214(b) in violation of his 6th, 8th and 14th amendment rights!!!

Ground five: Conflict of Interest

Movant claims that counsel violated rules of professional responsibility, under Rule 1.6 Confidentiality of Information of the Rule of Professional Conduct violating his sixth and fourteenth Amendment right of due process and equal protection under the law!!!

Defendant has attached a “Memorandum of Law” in support of his above claims.

3. 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 Superior Court Criminal Rule 61 (“Rule 61”).¹ 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.²

4. Rule 61(i)(1) will bar a motion filed more than one year after a final judgment of conviction unless it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final.³ A movant can avoid this procedural bar, however, if under Rule 61(i)(5), if the movant

¹ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). *See also Bailey v. State*, 588 A.2d 1121, 1127 (Del. Super. 1991).

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

³ Super. Ct. Crim. R. 61(i)(1).

can show that the court lacked jurisdiction or makes “a colorable claim that there was a miscarriage of justice because of a constitutional violation.”⁴

This exception, referred to as the “fundamental fairness” exception, is narrow and is applied only in limited circumstances.⁵

5. A judgment of conviction is final “30 days after the Superior Court imposes sentence.”⁶ Defendant's judgment of conviction became final on August 12, 2001, thirty days after Defendant was sentenced. Defendant's motion, filed on May 9, 2008, is clearly outside the applicable one year time limit. Defendant can only avoid this procedural bar if he makes a colorable constitutional claim, thereby invoking the fundamental fairness exception of Rule 61(i)(5).

6. Upon this Court's request, Defendant's counsel responded to Defendant's claims, as related to their representation. In his letter to the Court, Mr. Pedersen explained in detail the steps taken to defend Mr. Johnson:

Mr. Johnson's claim that he was coerced into accepting a guilty plea is without merit and baseless. The truth behind Mr. Johnson's decision to accept the guilty plea was based upon his incriminating statement to the police coupled with his prior criminal record making him a career

⁴ *Id.* at 61(i)(5).

⁵ *Younger*, 508 A.2d 555.

⁶ Super. Ct. Crim. R. 61(m)(1).

offender. The combination of these two factors made it likely that he would be convicted of murder in the first degree, and subsequently receive the death penalty. . . . Johnson next alleges that counsel failed to perform an adequate investigation of his claim. On Johnson's behalf counsel prepared a motion to invalidate the death penalty, prepared and pursued a motion to suppress the incriminating statement he made to police, made specific requests for police reports in an attempt to support a self-defense claim and retained a private investigator who interviewed witnesses in pursuit of this defense.⁷

Defendant was also represented by Mr. O'Connell, who stated in his affidavit in connection with Defendant's ineffective assistance of counsel claim:

[W]e engaged a private investigator who interviewed a number of witnesses whose names and contact information were provided by our client, as well as those contained within the police reports provided us by the State. We also reviewed physical evidence at the Wilmington Police Department. Finally, we moved the Court to compel the State to produce evidence relating to the victim's violent and aggressive behavior so as to prepare for a defense at trial of self-defense.⁸

In response to Defendant's allegation of a coerced guilty plea, Mr.

O'Connell stated:

Based upon my practice and, in all probability, based upon a review of the plea colloquy transcript, it is likely that Mr. Pedersen and I told Mr. Johnson that the minimum sentence that the Court could impose was ten years for the Second Degree Murder conviction and three years for the Possession of a Firearm During the Commission of a Felony conviction. Regardless of what was told the defendant, I am sure the court reviewed the full range of penalties with the defendant in conjunction with his guilty plea and ascertained that the defendant understood he could receive the full measure of punishment available to the Court at the time of sentencing.⁹

⁷ Letter from Thomas A. Pedersen, Esquire, Re: R. 61, D.I. 127.

⁸ Aff. of Kevin J. O'Connell, Esquire, D.I. 128.

⁹ *Id.*

In response to Defendant's conflict of interest allegation, Mr. O'Connell stated:

Mr. Johnson alleges that we divulged confidential information to family members in an effort to obtain their assistance in convincing the defendant into enter[ing] a guilty plea. The motion does not specifically identify the confidential information we divulged to his family members and how this worked a prejudice to his case, so counsel cannot respond to this allegation.¹⁰

7. Thus, after careful review of Defendant's motion,¹¹ the submissions of defense counsel, and the State's Response,¹² it is clear that Defendant's claims lack merit. Therefore, Defendant's claims do not warrant consideration pursuant to the fundamental fairness exception of Rule 61(i)(5).

8. For the reasons stated, Defendant's Motion for Postconviction Relief is **DENIED**.

9. Defendant's Motion for Default is denied as moot.

IT IS SO ORDERED.

Richard R. Cooch

oc: Prothonotary
cc: Andrew J. Vella, Esquire
John C. Johnson
Thomas A. Pedersen, Esquire
Kevin J. O'Connell, Esquire

¹⁰ *Id.*

¹¹ Mot. for Postconviction Relief, D.I. 122.

¹² State's Resp., D.I. 131.