

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
*JUDGE*

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

April 14, 2009

Lester J. Hickman  
SBI No.  
James T. Vaughn Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

James E. Liguori, Esquire  
Liguori, Morris & Yiengst  
46 The Green  
Dover, DE 19901

Adam D. Gelof, Esquire  
Department of Justice  
114 East Market Street  
Georgetown, DE 19947

**RE: State of Delaware v. Lester J. Hickman  
Def. ID # 0104000979  
Amended Memorandum Opinion - Motion for Postconviction Relief**

Dear Counsel and Mr. Hickman:

I have revised the above-reference memorandum opinion to make it clear what the practice is in Sussex County regarding the waiver of a preliminary hearing.

Very truly yours,

E. Scott Bradley

cc: Prothonotary's Office

April 14, 2009

Lester J. Hickman  
SBI #  
James T. Vaughn Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

RE: **State of Delaware v. Lester J. Hickman**  
**Def. ID # 0104000979**  
**Amended Memorandum Opinion - Motion for Postconviction Relief**

Date Submitted: February 23, 2009

Dear Mr. Hickman:

This is my decision on your fourth motion for postconviction relief. The State of Delaware charged you by information with Trafficking in Cocaine, Possession with the Intent to Deliver Cocaine, Maintaining a Dwelling for Keeping Controlled Substances, Conspiracy in the Second Degree, Possession of Cocaine, and Possession of Drug Paraphernalia on May 2, 2001. You were convicted of Trafficking in Cocaine, Possession with the Intent to Deliver Cocaine, Maintaining a Dwelling for Keeping Controlled Substances, and Possession of Drug Paraphernalia on August 30, 2001. The Supreme Court affirmed your convictions on June 7, 2002.<sup>1</sup>

You now argue, almost eight years after the information was filed against you, that the Superior Court lacked jurisdiction over you because you allegedly did not waive your right to (1) a preliminary hearing, and (2) be prosecuted by indictment. You were represented at trial by James E. Liguori, Esquire. The State was represented by Deputy Attorney General Adam D.

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<sup>1</sup> *Hickman v. State*, 801 A.2d 10, 2002 WL 1272154 (Del. June 7, 2002)(TABLE).

Gelof, Esquire. Liguori and Gelof submitted affidavits in response to your allegations. Given that your argument is not supported by the available records, I have concluded that there is no need to have an evidentiary hearing.

Your argument that the Superior Court did not have jurisdiction over you is procedurally barred.<sup>2</sup> You should have raised it before trial and on your direct appeal. You did not do either. Moreover, you also have not shown cause for relief from this procedural bar or prejudice from this alleged violation of your rights. Therefore, your argument is barred.<sup>3</sup>

Moreover, there is no merit to your argument. In general, offenses within the exclusive jurisdiction of the Superior Court must be prosecuted by indictment.<sup>4</sup> However, offenses other than capital crimes may be prosecuted by information if the defendant waives his right to be prosecuted by indictment.<sup>5</sup> The waiver may either be in writing or in open court.<sup>6</sup> The purpose of a preliminary hearing is to determine if there is probable cause to arrest a defendant.<sup>7</sup> Not having a preliminary hearing is not a jurisdictional issue.<sup>8</sup> Since this is not a jurisdictional issue, your argument is without merit.

Your argument is also not supported by the facts. Gelof and Liguori both stated in their

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<sup>2</sup> Superior Court Criminal Rule 61(i)(3).

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

<sup>4</sup> Superior Court Criminal Rule 7(a).

<sup>5</sup> Superior Court Criminal Rule 7(b).

<sup>6</sup> *Id.*

<sup>7</sup> *State v. Bailey*, 2004 WL 2914320 (Del. Super. Dec. 13, 2004).

<sup>8</sup> *State v. Lum*, 2007 WL 1041415, at \*6 (Del. Super. March 22, 2007), *aff'd*, 941 A.2d 1018, 2007 WL 4442633 (Del. Dec. 20, 2007)(TABLE).

affidavits that you waived your right to a preliminary hearing and to be prosecuted by indictment. The record shows that you did waive your preliminary hearing in the Court of Common Pleas on April 12, 2001. The record contains the probable cause sheet from the Court of Common Pleas.<sup>9</sup> The probable cause sheet states, “Liguori, atty waived.” The longstanding practice in Sussex County is for a defendant to waive both (1) his right to a preliminary hearing, and (2) his right to be prosecuted by indictment in exchange for a copy of the police report.<sup>10</sup> Since the defendant has waived his right to be prosecuted by indictment as part of this exchange, the State may then proceed by information. That is exactly what happened here.

**CONCLUSION.**

Your fourth motion for postconviction relief is DENIED.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary’s Office  
Adam D. Gelof, Esquire  
James E. Liguori, Esquire

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<sup>9</sup> See Exhibit A.

<sup>10</sup> *In re Miller*, 1995 WL 656783, at \*2 (Del. Super. Oct. 11, 1995).

Exhibit A

PRELIMINARY HEARING CALL, JAR

04/12/2001 NUMBER: 0019

SCHEDULE PRELIM LENGTH: 1 day(s)

Related:

HICKMAN LESTER AKA: : HICKMAN LESTER J  
 DOB: : 07/26/1955 DOB: : 07/26/1955  
 0104000979 SBI#: 00124045

*Legion, City*  
*Waived*

INDICATORS:

Arrest Date: 04/02/2001 Indictment Date:

SEQ	DESCR.	Cr.A#	DISP	BAIL	TYPE	POSTED?
001	TRF.COC.5-506	PS-01- -1098		15000.00	CASH	
002	PWTD NSII CS	PS-01- -1099		10000.00	CASH	
003	MAINT DWELLING	PS-01- -1100		2000.00	CASH	
004	CONSP 2ND	PS-01- -1101		2000.00	CASH	
005	POSS,USE,CONS.N	PS-01- -1102		500.00	CASH	
006	POSS DRUG PARAP	MS-01-04-0028		500.00	CASH	

*Secured*

Capias/Warrant History: DOC Location: SCI SUBSEX CORR INSTITUTION

Date Issued	By	Warrant Comments	Return Date	Act.
19930524	R6	--NOT WANTED-- WRK REL HOST: SUSSEX WORK RELEASE CE	19930709	C
19940601	07	CRIMINAL TRESPASS	19940919	A
19960606	05	RONALD TATE / TERRORISTIC THREATENING	19960722	A
19980525	07	DEBORAH JESTER / AGGRAVATED MENACING	19980617	A
19990410	07	JAY BURNS / TERRORISTIC THREATENING DISORDERLY CONDU	19990412	A
20001222	07	TERRORISTIC THREATENING	20001228	A

Continuance History:

Date	Event	Reason
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*Bm*  
*\$ 30,000 secured*

History through the courts:

Scheduled Date	Event	Disp
04/12/2001	SCHEDULE PRELIM	

*0-tolerance for alcohol/drugs*  
*Report immediately to Probation Officer*



