

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

STATE OF DELAWARE,	)	
	)	
v.	)	ID#: 0510006692
	)	
KEVIN L. DICKENS,	)	
Defendant.	)	

Submitted: January 29, 2009  
Decided: April 23, 2009

**ORDER**

**Upon Defendant's Motion for Postconviction Relief – *DENIED***

1. While in maximum security, Defendant threw excrement on his guards, resulting in assault charges. At his insistence, Defendant represented himself at trial and was ultimately convicted. Defendant admitted the assaults, but his excuse was that he acted preemptively, and the guards deserved it.

2. On July 27, 2006, the court denied Defendant's motion for a new trial.<sup>1</sup> Defendant filed a direct appeal and, on April 2, 2008, the Supreme Court affirmed.<sup>2</sup>

---

<sup>1</sup> *State v. Dickens*, 2006 WL 2473962 (Del. Super. July 27, 2006).

<sup>2</sup> *Dickens v. State*, 950 A.2d 658 (Del. 2008) (TABLE).

3. Defendant filed this timely, *pro se* motion for postconviction relief based on, among other things, a Rule 35 disproportionate sentencing claim and ineffective assistance of stand-by counsel at sentencing.

4. Virtually all of Defendant's claims are procedurally barred by Superior Court Criminal Rule 61(i)(3)<sup>3</sup> and (4).<sup>4</sup> For example, two claims now presented were argued on direct appeal. The fact that the Supreme Court "never addressed" certain claims in its final decision is of no moment here. Additionally, one cannot "reserve the right to argue additional grounds" with the Supreme Court, as Defendant tried to do. Either you argue it, or you do not. Piecemeal appeals and postconviction relief proceedings are not allowed.

5. Defendant fails to show cause and prejudice for his procedural defaults. Moreover, any constitutional claim Defendant alleges fails because he does not show that it "undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction."<sup>5</sup> Again, in court,

---

<sup>3</sup> Super. Ct. Crim. R. 61(i)(3) ("Any ground for relief that was not asserted in the proceeding leading to the judgment of conviction . . . is thereafter barred, unless. . . (A) cause . . . and (B) prejudice . . .").

<sup>4</sup> Super. Ct. Crim. R. 61(i)(4) ("Any ground for relief that was formerly adjudicated, whether in the proceeding leading to the judgment of conviction, in an appeal . . . is thereafter barred, unless reconsideration is warranted in the interest of justice.").

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

Defendant admitted throwing excrement on his prison guards as they tried to serve his a meal, and his sentence was within the guidelines.

6. With respect to Defendant's Rule 35 claim, he initially raised the motion while his appeal was pending and the court refused to consider it.<sup>6</sup> Although not in proper form, the court has reviewed the claim and finds it is substantively without merit.

7. Defendant recognizes that the "sentence is well within the guidelines." Nevertheless, Defendant claims he was subject to more severe sentencing than what the court was then imposing on other, more serious offenders. To support his claim, Defendant points to two cases, both of which are not comparable to Defendant's situation. For example, one case, which had nothing to do with an assault in a prison, involved a heavily negotiated plea agreement. Despite the State's lenient sentencing recommendation in that case, the court sentenced the defendant to *more* time than that agreed on by the parties. Defendant simply ignores the fact that he committed his crimes against correctional officers while in a maximum security prison. Therefore, his sentence, which was well within the guidelines, stands.

---

<sup>6</sup> Docket Item ("D.I.") No. 58 (Nov. 11, 2006) (ORDER).

8. With respect to Defendant's ineffective assistance of counsel claim, he fails to overcome *Strickland v. Washington*'s test.<sup>7</sup> After conviction, Defendant allowed his stand-by counsel to represent him at sentencing. Defendant now claims that counsel was ineffective for failing to promptly request a mental health evaluation after sentencing. Knowing that Defendant had refused an evaluation twice before, the court issued a letter to counsel requesting Defendant's assurance that he would participate in an evaluation on the court's, rather than on Defendant's, terms.<sup>8</sup> Ultimately, the court denied the evaluation request,<sup>9</sup> and now Defendant attempts to hold that against his counsel.

9. At this point, Defendant's mental health evaluation is a non-issue. Defendant was evaluated in association with a more recent case.<sup>10</sup> The evaluator concluded that Defendant does not suffer from a major mental illness, though he is "narcissistic" and "maladaptive". Yet, Defendant was found to be unmotivated to change. If the court had the evaluation before it sentenced Defendant, the evaluation

---

<sup>7</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

<sup>8</sup> D.I. No. 47.

<sup>9</sup> D.I. No. 49.

<sup>10</sup> Id. No. 0708003661.

would not have helped Defendant. Thus, even if Defendant could show counsel's actions were unreasonable, which they were not, he has suffered no prejudice.

10. For the foregoing reasons, Defendant's motion for postconviction relief is **DENIED**.

**IT IS SO ORDERED.**

/s/ Fred S Silverman  
Judge

cc: Prothonotary (criminal)  
Ipek Medford, Deputy Attorney General  
Timothy Weiler, Esquire  
Kevin L. Dickens