

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

STATE OF DELAWARE)	
)	
)	
v.)	I.D. No. 0701026598
)	
JOSEPH A. YOUNG,)	
)	
Defendant.)	
)	

Submitted: May 11, 2009
Decided: July 23, 2009

Upon Defendant's Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

Mark H. Conner, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Joseph A. Young, Correctional Institution, Smyrna, Delaware, *pro se*.

COOCH, J.

This 23rd day of July, 2009, upon consideration of Defendant's motion for postconviction relief, it appears to the Court that:

1. On July 24, 2007, after a non-jury trial on stipulated facts, Defendant was convicted of one count of Trafficking in Cocaine and one count of Possession with Intent to Deliver Cocaine. Defendant was sentenced on August 2, 2007, to fourteen years at Level V suspended after eight years for two years at Level IV suspended after six months for Level III and Level II probation.

2. Defendant timely appealed his conviction to the Supreme Court. Immediately thereafter, Defendant's trial counsel concluded the appeal was wholly without merit and filed a motion to withdraw pursuant to Supreme Court Rule 26(c). The Supreme Court granted the motion to withdraw and affirmed this Court's verdict on April 2, 2008.¹ The Supreme Court issued its mandate on April 23, 2008.

3. On January 23, 2009, Defendant filed a *pro se* "Motion for Discovery and Inspection." Defendant's motion was a routine pre-trial discovery motion (but filed after the trial and the appeal) that made no mention of any forthcoming Motion for Postconviction Relief. Since there was "[n]o basis in law or procedure" that authorized such motion at that stage of the case, Defendant's motion was denied.²

¹ *Young v. State*, 945 A.2d 1168 (Del. 2008)(table).

² Letter/Order Issued by the Court on February 3, 2009. Superior Court Criminal Docket No. 29.

4. Defendant filed a motion for postconviction relief on May 11, 2009.³ The only ground for postconviction relief Defendant raised in his motion is ineffective assistance of counsel. Defendant alleges his trial counsel was ineffective for the following reasons: 1) failing to object to the chain of custody of the drugs offered into evidence against him at trial; 2) failing to object to the State allegedly placing him in double jeopardy by convicting him of both intent to deliver cocaine and trafficking in cocaine; 3) advising him to waive his right to a jury trial; and 4) coercing him into waiving his right to a jury trial. Defendant also alleges that his appellate counsel was ineffective for withdrawing and failing to raise the aforementioned issues on appeal.

5. Defendant alleges that his motion for postconviction relief is timely because his conviction “became final on or about April 5, 2008,” his “Motion for Discovery and Inspection” was filed on January 23, 2009, he filed an appeal from this Court’s denial of that motion to the Supreme Court on February 23, 2009, and “this motion [was] filed before April 5[,] 2009.”⁴

6. 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.⁵ A movant can avoid

³ Defendant’s motion for postconviction relief was received by this Court and docketed by the Prothonotary on May 11, 2009. Defendant’s motion, however, is dated by Defendant on May 5, 2009. The discrepancy in the dates is immaterial because Defendant’s motion is untimely based on either date.

⁴ Def.’s Memorandum of Law at 6.

⁵ Super. Ct. Crim. R. 61(i)(1).

this procedural bar, however, if under Rule 61(i)(5), the movant can show that the court lacked jurisdiction or makes “a colorable claim that there was a miscarriage of justice because of a constitutional violation.”⁶ This exception, referred to as the “fundamental fairness” exception, is narrow and is applied only in limited circumstances.⁷

7. Defendant’s Motion for Postconviction Relief is untimely as it was filed more than one year after a final judgment of his conviction. The Supreme Court issued its mandate on April 23, 2008. Although Defendant claims that he filed his Motion for Postconviction Relief on “April 5 [,] 2009,” Defendant dated his motion “5/05/009 [sic]” and his motion was docketed by the Prothonotary on May 11, 2009.⁸

8. Moreover, the “fundamental fairness” exception does not apply here as there is no claim that this Court lacked jurisdiction nor was there a miscarriage of justice because of a constitutional violation. In order for Defendant’s counsel to be unconstitutionally ineffective, the trial and appellate counsels’ representations must have fallen below an objective standard of reasonableness and there must be a probability that but for the counsels’ errors, the result of the proceedings would have been different.⁹

⁶ *Id.* at 61(i)(5).

⁷ *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

⁸ Superior Court Criminal Docket No. 32.

⁹ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

9. It is clear from Defendant's motion that Defendant's claims do not meet the high standard that the “fundamental fairness” exception requires. Defendant must support his allegations, including claims of ineffective assistance of counsel, with “concrete allegations of actual prejudice, or risk summary dismissal.”¹⁰ Defendant has failed to support his claims of ineffective assistance of counsel with any concrete allegations of actual prejudice.¹¹

10. Defendant has failed to show that his counsels’ representations fell below an objective standard of reasonableness. Furthermore, Defendant has failed to show that but for his counsels’ alleged errors, the result of the proceedings against him would have been different. Therefore, Defendant’s claims do not warrant consideration pursuant to the “fundamental fairness” exception of Rule 61(i)(5).

11. For the reasons stated, Defendant’s Motion for Postconviction Relief is **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

Richard R. Cooch

oc: Prothonotary
oc: Mark H. Conner, Esq., Deputy Attorney General
oc: Ralph D. Wilkinson, IV, Esq., Assistant Public Defender

¹⁰ *State v. Chambers*, 2008 WL 4137988, at *1 (Del. Super.) (quoting *State v. Childress*, 2000 WL 1610766, at *1 (Del.Super.)).

¹¹ *Id.* (summarily dismissing the defendant’s motion for postconviction relief where he alleged ineffective assistance of counsel because he failed to support his claims with concrete allegations of prejudice).