SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

May 1, 2009

N440 - State Mail
Joseph R. King
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: Defendant ID Nos. 0201002245 (R-3) and 0202010963 (R-3)

Dear Mr. King:

On April 9, 2009,the Court received your third Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). It is denied pursuant to Rule 61(i)(4) as I have determined an evidentiary hearing is not required.

In the present motion, you allege you were not able to knowingly, voluntarily and intelligently enter your guilty plea in 2002 due to "the massive amount of psychiatric medications" you were taking.

HISTORY

In late 2001 and early 2002, you were charged with four burglaries, as well as related charges in one charging document, and two robbery first degree charges, more burglaries as well as related charges in a second charging document. You had separate counsel on each set of charges.

Competency to stand trial and a mental illness defense were both explored. I have reviewed the two sealed reports in the Court's file from the Delaware Psychiatric Center ("DPC"). The staff at DPC opined that you had some issues, but that you understood the criminal justice process and were able to assist your attorney. You were competent to stand trial.

In the second report, the DPC staff opined that while you had "a number of psychiatric issues", these issues did not give rise to an insanity defense. A review of this report evidences a history of substance abuse and a long history of criminal behavior beginning with a burglary at age 9.

Final case reviews and trial dates had been continued awaiting these reports.

On September 4, 2002, with the benefit of both of your criminal defense attorneys, you finalized plea negotiations with the State and entered a guilty plea to one count of robbery in the first degree as an habitual offender, three counts of burglary in the third degree, and a theft. On the robbery, the plea recommendation was twenty (20) years, which was the minimum you could receive for a crime of violence as a habitual offender. On the burglaries and theft, the recommendation was Level 5 incarceration, suspended upon completing a Level 5 substance abuse program, followed by probation.

The Count found the negotiated sentence to be reasonable and sentenced accordingly. There was no appeal. Therefore, the matter became ripe for possible Rule 61 review on September 4,2002.

The transcript evidences these important points:

(a) You were represented by two attorneys.

(b) The mental health issues were fully discussed.

(c) Your attorneys reported that they found you to be alert and understanding in their discussions with you. One attorney reported that he had one visit with you at the prison where he thought you were heavily medicated and that "I did not get through to him at all". But that attorney reported in his last three or four visits with you at the prison, he was able to communicate with you. He reported you were able to understand and communicate with him about this case.

Under oath, I asked you many questions. You were alert and your responses appropriate as to what was taking place. You told me that Paxil was the only medication you were taking. You further stated that you only took the appropriate amount and had not "squirreled some away".

A full discussion occurred as to your trial rights, the consequences of pleading guilty, and the additional consequences of the habitual offender statute.

Finally, at the end of the plea colloquy, this discussion occurred:

> THE COURT: . . . I want you to think about something. I am not trying to discourage you. I want to make sure that you understand the impact of what we are doing.
>
> You understand that if I accept this, this is going to be done and over without a trial and that if you write me and complain that your lawyers didn't do this or didn't do that or your lawyers tricked you or you make complaints about your lawyers, I am telling you that I don't want to hear any problems you have with your lawyers or what you are doing right now.
>
> As the minister says, speak now or forever hold your peace. When it is all said and done, I am going to look at this, if you complain later, and I am going to say, "Well, we had a chance to thrash this out. You had a chance to go to trial and resolve everything."
>
> You are the one who is driving this right now. You are the one who says you want to plead guilty and stop the trial. So tell me, is there anything at all that you have any complaints or any reasons why I shouldn't accept this plea?
>
> THE DEFENDANT: No, sir.
>
> THE COURT: And this is what you want to do?
>
> THE DEFENDANT: Yes.
>
> THE COURT: I accept the plea as knowingly, voluntarily, and intelligently offered.

On August 5, 2005, you filed your first pro se Motion for Postconviction Relief. It was timely under the then existing three years permitted by Rule 61(i)(1). It raised a sophisticated point of law as to whether you could be guilty of robbery in the first degree based upon a subsequent case involving whether a weapon was "displayed". Walton v. State, 821 A.2d 871 (Del. 2003). You sought to have your robbery first conviction reduced to robbery in the second degree. The Court denied your motion on December 7, 2005.

On October 21, 2007, you filed your second Motion for Postconviction Relief complaining about the restitution that had been ordered. It was also filed pro se . On November 9, 2007, this motion was denied.

The docket also reflects that you have made at least two Motions for Modification.

Based upon all of the above, I find your third Motion for Postconviction relief should be dismissed as procedurally barred.

Your conviction is six and a half (6-1/2) years old. You are well past the time limits imposed by Rule 61(i)(1).

Your motion is a repetitive motion and therefore barred by Rule 61(i)(2).

You have not asserted cause for not raising this issue in a timely manner, nor asserted prejudice. Therefore, it is barred by Rule 61(i)(3).

I find that the exception to these bars, as contained in Rule 61(i)(5), is not applicable. Normally a claim that a plea was not voluntarily and knowingly entered into under the facts you allege would require an evidentiary hearing, but none is necessary because of the following:

> (a) Attempting to reconstruct events occurring in 2002 would be difficult. The transcript is the best record of the events and your ability to comprehend the events concerning the plea. Your attorneys and the Court had the benefit of our conversations with you, observing your speech and your demeanor. The Court made a finding that you knowingly, voluntarily and intelligently entered the guilty plea while you were taking Paxil. That medication did not interfere with your ability to enter a proper guilty plea. I suspect it actually helped.
>
> (b) More important to the summary dismissal is that through the years, you have regularly communicated with the Court, including sophisticated legal issues. These communications and arguments belie a person who failed to comprehend the events surrounding his guilty plea. These communications establish that whatever shortcomings you now allege you suffered from on September 4, 2002, you could have brought same to the Court within the three years the Rule then in existence required.

Therefore, based on the plea colloquy, I am satisfied you entered a knowing, intelligent, and voluntary plea. Based upon the filings and communications with the court since September, 2002, I am satisfied that you had the ability to raise your present complaint in a timely manner, and not 6-1/2 years later.

Defendant's Motion for Postconviction Relief is denied.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

baj
cc: Prothonotary
Paula T. Ryan, Esquire