

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

STATE OF DELAWARE,)	
)	
v.)	ID#: 9607012102
)	
DONALD F. BASS,)	
Defendant.)	

Submitted: March 17, 2009¹
Decided: June 30, 2009

ORDER

Upon Defendant’s Motion for Recusal – *DENIED*

**Upon Defendant’s Third Motion for Postconviction Relief –
*SUMMARILY DISMISSED***

1. On December 11, 2008, Defendant filed this, a motion for recusal and his third motion for post-conviction relief. Again, Defendant claims that his trial and his decision to represent himself were tainted by a judge’s threats and “judicial misconduct.” The running theme is that the court had it in for Defendant because he insisted on going to trial, rather than accepting a plea. As presented below,

¹ The court attempted, for the third and final time, to obtain transcripts from Defendant’s December 9, 1996 case review. The Court Reporter’s office, again, definitively informed the court on March 17, 2009 that the transcript is irretrievable.

Defendant's claims were originally untimely and, at this point, have previously been considered.

2. The Prothonotary properly referred the motion to the undersigned, as the trial judge, on January 5, 2009.² Upon preliminary review, it appears that the motion is subject to summary dismissal.

3. In January 1998, after six case reviews, Defendant stood trial for bank robberies and related crimes. He was convicted and sentenced as a habitual offender.³ Defendant filed a direct appeal.

4. On appeal, Defendant did not challenge the court's impartiality. Instead, Defendant argued the court erred by not appointing stand-by counsel, failing to merge Defendant's armed robbery and weapons offenses at sentencing, and sentencing Defendant as a habitual offender. Defendant also claimed prosecutorial misconduct. Defendant's conviction and sentence were affirmed on September 13, 2000.⁴

5. After his direct appeal was decided, in February 2001, Defendant requested his case review transcripts. On April 3, 2001, Defendant filed a motion for

² Super. Ct. Crim. R. 61(d).

³ 11 *Del. C.* § 4214(a) and (b).

⁴ *Bass v. State*, 760 A.2d 162 (Del.) (TABLE).

transcripts. Defendant alleged that another judge, identified by name, threatened him at a case review “on October 31, 1996 or December 9, 1996.”

6. In a four-page order issued April 4, 2001, the court denied Defendant’s motion for transcripts. The court specifically addressed Defendant’s allegation that another judge had threatened him over a year before the trial, and before two, intervening case reviews. The court explained how the “judicial misconduct” claim was procedurally barred at that point. Further, the court explained how the unfairness claim was refuted by the trial transcript. With one possible exception, discussed below,⁵ Defendant could not (and cannot) point to anything during his trial remotely showing the slightest ill-will on the trial judge’s part. If anything, the court was overly solicitous at trial. And, the worst of Defendant’s sentence comes from Delaware’s habitual offender law, not the court’s discretion.

7. On May 24, 2001, Defendant filed his first motion for postconviction relief. There, Defendant argued ineffective assistance of appellate counsel, inadequate jury instructions and “judicial misconduct.” As to the latter, which relates to this motion, Defendant again claimed the other judge, whom Defendant again identified by name, threatened him during the case review process.

⁵ See ¶ 16, *infra*.

Defendant made that claim, despite the docket's naming the trial judge as having presided over the December 1996 case review. In denying Defendant's first motion for postconviction relief, the court addressed Defendant's claims, including the one alleging judicial misconduct.⁶

8. Defendant appealed that denial, and on December 12, 2001, the appeal was dismissed as untimely after Defendant failed to file his required brief.⁷ Shortly thereafter, Defendant again asked for the case review transcripts, but at his expense. The court approved that request, but the court reporters could not find the notes from the December 9, 1996 hearing. In response to his being told that the notes were gone, Defendant filed a petition for a writ of mandamus in the Supreme Court.

9. On November 14, 2002, the Supreme Court denied mandamus as being impossible to grant under the circumstances because the court reporter's notes were lost.⁸ The Supreme Court held that Defendant "may raise the alleged relevancy of the December 9, 2001 case review hearing transcript in a motion for

⁶ *State v. Bass*, 2001 WL 1628476 (Del. Super. Oct. 17, 2001) (finding "inconsistency with the record" as "a consistent thread running through Defendant's motion").

⁷ *Bass v. State*, 788 A.2d 130 (Del.) (TABLE).

⁸ *In re Petition of Bass*, 810 A.2d 349 (TABLE).

postconviction relief.”⁹

10. Despite the Supreme Court’s mandamus denial and all that lead up to it, on March 4, 2003, Defendant filed another motion for transcripts. In response, as a matter of expedience, this court launched a second effort to find the reporter’s notes, to no avail. So, again, in a April 29, 2003 letter, the court denied Defendant’s second motion for transcripts.

11. On November 7, 2003, Defendant filed his second motion for post conviction relief. Again, he complained about the court’s granting his request for self-representation and, again, he alleged “judicial misconduct.” In a supplemental pleading filed on May 23, 2003, despite the docket, Defendant specifically assured the court, in the penultimate paragraph, that the judge who presided over the December 9, 1996 case review was another judge, not the trial judge. In any event, on February 27, 2004, the court issued an order dismissing Defendant’s second motion for postconviction relief.¹⁰

12. Defendant filed an appeal, but the denial of the second motion for postconviction relief was affirmed on July 1, 2004.¹¹

⁹ *Id.*

¹⁰ *State v. Bass*, 2004 WL 396372 (Del. Super.) (Defendant “refined” previous claims, but offered nothing new).

¹¹ *Bass v. State*, 852 A.2d 907 (Del.) (TABLE).

13. As presented above, on December 11, 2008, Defendant filed this, his third motion for postconviction relief. Now, despite the fact that Defendant was present at his December 9, 1996 case review hearing and his repeated insistence that it was another judge who threatened him, Defendant has decided it was the trial judge who threatened him in December 1996. He also seeks to relitigate his entitlement to stand-by counsel, which was addressed during his direct appeal and in subsequent postconviction relief motions.

14. In light of the above, Defendant's claims are procedurally barred under Superior Court Criminal Rule 61(i)(1) – (4), and he has not even attempted to show cause and prejudice for his procedural defaults nor a resulting injustice. The court has discussed above, and in prior decisions, how Defendant's claims are repetitive and previously litigated. There is nothing presented here that was not presented, or should not have been presented, in Defendant's direct appeal and earlier postconviction relief motions. The interests of justice do not dictate repeat consideration of the same claims, even if they are slightly repackaged.¹²

¹² *State v. Zebroski*, 2009 WL 807476, *3 (Del. Super. Mar. 19, 2009) (citing *Nicholson v. State*, 582 A.2d 936 (Del. 1990)).

15. Defendant's motion for recusal is based on his current claim that the trial judge had threatened to sentence Defendant to many years in prison if Defendant did not plead guilty. Defendant argues that the alleged threat bespeaks a predisposition and closed-mind on the trial judge's part.

16. Now that the accusation is directed to the trial judge, it can be said unequivocally that no threat was made by the trial judge. The trial judge would not have cared whether Defendant pleaded guilty on December 9, 1996. Actually, the record shows that before trial in 1998, the trial judge did not remember having seen Defendant in December 1996. And, the record that exists after 1996 shows no predisposition on the court's part. Other than the court's having denied stand-by counsel, Defendant has not even alleged a specific abuse of discretion by the trial judge. As to the stand-by counsel issue, that has been litigated and definitively resolved. As to sentencing, Defendant's mandatory life sentences were imposed by law, not the court's discretion.¹³ For the last time, the court will emphasize the fact that a complete record exists for Defendant's entire trial and sentencing, including his insistence on self-representation. The record refutes any claim that Defendant did not receive a fair trial and sentence.

¹³ See n. 3, *supra*.

For the foregoing reasons, Defendant's motion for recusal is **DENIED**, and for the reasons presented above and in earlier decisions by this court and the Supreme Court, Defendant's third motion for postconviction relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary (criminal)
Paul Wallace, Deputy Attorney General
Donald Bass