

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
 v.) ID No. 0509007366
)
TERRANCE CALDWELL,)
)
 Defendant.)

Submitted: June 22, 2009
Decided: September 14, 2009

On Defendant’s Motion for Postconviction Relief - DENIED.

ORDER

Caterina Gatto, Esquire, Department of Justice, 820 North French Street,
Wilmington, Delaware 19801. Attorney for State of Delaware.

Terrance Caldwell, Plummer House Work Release, Wilmington, Delaware. *Pro*
Se Defendant.

CARPENTER, J.

On this 14th day of September 2009, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. Terrance Caldwell (the "Defendant"), has filed a *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). For the reasons set forth below, the Defendant's Motion for Postconviction Relief is **DENIED**.

2. The Defendant was indicted on October 3, 2005 on three counts: (1) Possession with Intent to Deliver; (2) Possession of Drug Paraphernalia; and (3) Loitering. On March 7, 2006, the State entered a nolle prosequi on the Loitering Charge. The jury found Defendant guilty on both remaining charges on March 8, 2006. On June 16, 2006, the Superior Court sentenced the Defendant to four years Level 5 suspended after three years for 6 months Level 4 for Possession with Intent to Deliver. Defendant was also sentenced to thirty days Level 5 on the Possession of Drug Paraphernalia charge. On July 7, 2008, the Defendant filed this Motion for Postconviction Relief asserting the following claims as grounds for relief: (1) violation of the Due Process Clause; (2) violation of 5th Amendment; (3) violation of 6th Amendment; (4) violation of 14th Amendment; (5) ineffective assistance of counsel; and (6) "motion(s) to remove counsel."¹

¹ Def.'s Mot. at 3.

3. Prior to addressing the merits of a postconviction relief claim, the Court must first determine whether the Motion meets the procedural requirements of Rule 61(i).² This section of Rule 61 sets forth certain parameters governing the proper filing of a motion for postconviction relief: (1) the motion must be filed within one year of the final judgment of conviction;³ (2) any ground for relief not raised in a prior postconviction motion will be barred if raised in the instant Motion; (3) any claims which the Defendant failed to assert in the proceedings leading to his conviction are barred, unless he is able to show cause and prejudice; and (4) any ground for relief raised in this Motion must not have been formerly adjudicated in any proceeding leading to the conviction, unless the interest of justice requires reconsideration.⁴

4. After reviewing the Defendant's present Motion, the Court finds that the Defendant's Motion is time-barred under Rule 61(i)(1). Under Rule 61(i)(1), a motion for postconviction relief is time-barred if filed more than one year after the judgment of conviction is final.⁵ Defendant's judgment of conviction was finalized by this

²See *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Maxion v. State*, 686 A.2d 148,150 (Del. 1996).

³See *State v. Lewis*, 2009 WL 1076838 (Del. Super. Apr. 21, 2009) (referencing the Rule 61 amendment change, effective July 1, 2005, which shortened the statutory period of filing from three-years to one-year).

⁴*State v. Greer*, 2008 WL 1850625 (Del. Super. Mar. 4, 2008); see also Super. Ct. Crim. R. 61(i)(1)-(5).

⁵ Super. Ct. Crim. R. 61(i)(1) was amended to require motions be filed within one year from the date of final conviction, effective July 1, 2005. Defendant's judgment was affirmed in February 2007, after the rule's amendment, the one-year limitation applies to Defendant's case.

Court on February 15, 2007. On July 7, 2008, over four months after the one-year statutory period, Defendant then filed this motion for postconviction relief. In order to protect the integrity of Delaware's procedural rules, this Court should not consider the merits of a postconviction claim where a procedural bar exists.⁶ As a result of the Defendant's procedurally defective filing, this postconviction motion and all substantive claims within are barred from relief.

5. For the foregoing reasons, the Court concludes that the Defendant's entire motion for postconviction relief is barred by the Rule 61 time limitation for filing. The motion is hereby DENIED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

⁶ *State v. Gattis*, 1995 WL 790961, at *2 (citing *Younger v. State*, 580 A.2d 552, 554 (Del. 1990)).