

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

STATE OF DELAWARE	)	
	)	
Plaintiff,	)	
	)	
v.	)	ID No. 85000061DI
	)	
COY E. BAILEY,	)	
	)	
Defendant.	)	

Submitted: December 8, 2009  
Decided: December 15, 2009

**MEMORANDUM OPINION**

Paul R. Wallace, Esquire, Department of Justice, Wilmington, Delaware –  
Attorney for the State.

Coy E. Bailey, SBI 091240, *Pro Se* Defendant

Defendant seeks an order compelling production of transcripts and documents relating to his trial which occurred more than two decades ago. Although Defendant does not explain why he needs these materials, the Court assumes he plans to use them in connection with some future motion for post conviction relief. For the following reasons, Defendant's motion is **DENIED**.

This case is so old that the trial documents Defendant seeks might be old enough to qualify as "ancient documents" under the hearsay exception.<sup>1</sup> In 1978 Defendant shot and killed Frank Dukes at a make shift shooting ranges. He was later convicted of murder in the first degree and a related weapons offense for that crime. The Delaware Supreme Court reversed his conviction and remanded his case for a new trial because of prosecutorial misconduct.<sup>2</sup> During Bailey's trial on remand the Superior Court declared a mistrial because one of the witnesses referred to the earlier trial. The Superior Court granted another mistrial after Defendant's second retrial because the jury was unable to reach a verdict. At his third trial on remand Defendant was again convicted of murder in the first degree and a related weapons offense and he was again sentenced to life without parole. His conviction and sentence of life without parole were affirmed on direct appeal.<sup>3</sup>

---

<sup>1</sup> D.R.E. 803(16)(excepting statements in "ancient documents" more than 20 years old from the limitations on the use of hearsay.)

<sup>2</sup> *Bailey v. State*, 440 A.2d 997 (Del. 1982). The Deputy Attorney General listed as counsel on this opinion was not involved in these proceedings.

<sup>3</sup> *Bailey v. State*, 521 A.2d 1069 (Del. 1987).

There was no further activity in Bailey's case until seven years later, when Defendant filed a motion for post conviction relief pursuant to Superior Court Criminal Rule 61. Both this Court and the Delaware Supreme Court concluded that his Rule 61 motion was procedurally barred.<sup>4</sup> Six years after that, in 2001, the Superior Court received correspondence from Defendant which it returned to him because it could not understand what Bailey was asking for. The docket was again quiet until 2005 when Bailey sent a largely indecipherable document to the Court. Now, after another delay of four years, Defendant has made the application presently before the Court.

Defendant has now filed what he labels an "Omnibus Transcript and Document Motion." In it Defendant seeks to compel production of, among other things, transcripts, affidavits, police reports, crime lab reports, witness statements and documents relating to his victim's autopsy. Bailey offers no explanation why he needs these documents other than a vague reference to "all motions pursuant to the instant criminal action." The Court's docket reflects no pending motions other than the so-called Omnibus Motion Assuming that Defendant intends to file some sort of motion for post-conviction relief in the future, there is nothing in his instant application suggesting why any such motion contemplated by him would not be procedurally barred. Indeed, he provides no hint as to the basis for a second Rule 61 motion other than a

---

<sup>4</sup> *Bailey v. State*, 1995 WL 218604 (Del. Apr. 6, 1995).

vague reference to his “guaranteed Constitutional Rights of Equal Protection and surely his due process of law rights” and “ineffective counsel.”<sup>5</sup>

An application for the production of transcripts is addressed to the sound discretion of this Court.<sup>6</sup> The Constitution does not “require that an indigent be furnished every possible legal tool, no matter how speculative its value, and no matter how devoid of assistance it may be.”<sup>7</sup> Thus it is not an abuse of discretion to deny a request for transcripts where the transcripts are sought for the preparation of a Rule 61 motion for post conviction relief and it appears that the Rule 61 motion would be procedurally barred.<sup>8</sup> Given the complete absence of any showing that Defendant has a colorable claim for post conviction relief that is not procedurally barred, his motion for probation of transcripts and other documents is **DENIED**.

It is **SO ORDERED**.

John A. Parkins, Jr.

cc: Prothonotary

---

<sup>5</sup> The latter was referred to in a four year old letter from Defendant to his former counsel which was attached to Defendant’s motion.

<sup>6</sup> *Robinson v. State*, 2003 WL 1869909 (Del. April 10, 2003).

<sup>7</sup> *United States v. Maccollom*, 426 U.S. 317,330 (1976).

<sup>8</sup> *Robinson v. State*, 2006 Del. LEXIS 464 (Del. Sept. 7, 2006).