

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

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| STATE OF DELAWARE |) | |
| |) | |
| v. |) | ID No. 0107017041 |
| |) | |
| TYRONE GUY, |) | |
| |) | |
| Defendant. |) | |

Submitted: November 5, 2009
Decided: December 1, 2009

On Defendant's Second Motion for Postconviction Relief. DENIED.

MEMORANDUM OPINION

Christopher D. Tease, Esquire, 1232 North King Street, Suite 300, Wilmington, Delaware 19801, Counsel for Defendant.

James T. Wakley, Esquire, Department of Justice, 820 North French Street, Wilmington, Delaware 19801.

CARPENTER, J.

On this 1st day of December 2009, upon consideration of Defendant's Second Motion for Postconviction Relief, it appears to the Court that:

1. Tyrone Guy ("Defendant" or "Guy"), has filed a Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"), to which the State has responded. For the reasons set forth below, Defendant's Second Motion for Postconviction Relief is DENIED.

2. Defendant was indicted on September 24, 2001 on the following charges: (1) First Degree Intentional Murder; (2) First Degree Felony Murder; (3) Possession of a Firearm During the Commission of a Felony; (4) First Degree Attempted Robbery; and (5) First Degree Conspiracy. The First Degree Conspiracy charge was later amended by the State to Second Degree Conspiracy. On July 2, 2004, a jury found Defendant guilty on all counts.¹ The Supreme Court affirmed Defendant's conviction on appeal in December 2006.² The facts of this case will not be repeated as they are set forth in this Court's order dated August 29, 2008.³

3. Defendant initially filed his first Motion for Postconviction Relief, *pro se*, on March 14, 2007.⁴ On April 12, 2007, Defendant moved for the appointment of counsel⁵, and the Court granted Defendant's request and appointed counsel shortly

¹ Del. Super. Ct. Crim. Dkt. No. 0107017041, D.I. 120.

² *Guy v. State*, 913 A.2d 558 (Del. 2006).

³ *State v. Guy*, 2008 WL 4152735, at *1 (Del. Super. Aug. 29, 2008).

⁴ Del. Super. Ct. Crim. Dkt. No. 0107017041, D.I. 183.

⁵ Del. Super. Ct. Crim. Dkt. No. 0107017041, D.I. 185.

thereafter.⁶ With the assistance of counsel, Guy filed a subsequent Motion for Postconviction Relief on January 2, 2008.⁷ This Court denied Defendant relief in August 2008.⁸ Defendant then filed an appeal with the Supreme Court.

4. While the appeal to the Supreme Court was still pending, Defendant filed a Second Motion for Postconviction Relief, *pro se*, on July 20, 2009.⁹ In this second motion, Defendant alleges he should be granted a new trial based on the Supreme Court's recent decision in *Allen v. State*, 970 A.2d 203 (Del. 2009). This Court denied the motion since the appeal of the original motion was pending in the Supreme Court.¹⁰ Defendant also appealed this decision to the Supreme Court.¹¹

5. On September 28, 2009, the Supreme Court remanded Defendant's first appeal to this Court for the purpose of allowing the Defendant to modify his initial Rule 61 motion to incorporate Defendant's *pro se Allen* claim. Defendant filed the present motion before the Court on October 20, 2009, and the State filed its response on November 5, 2009. The present motion has incorporated arguments beyond that made applicable by the *Allen* decision, and the Court finds such additional arguments inconsistent with the intent of the remand by the Supreme Court. The remand was

⁶ Del. Super. Ct. Crim. Dkt. No. 0107017041, D.I. 186.

⁷ Del. Super. Ct. Crim. Dkt. No. 0107017041, D.I. 192.

⁸ *State v. Guy*, 2008 WL 4152735, at *1 (Del. Super. Aug. 29, 2008).

⁹ Del. Super. Ct. Crim. Dkt. No. 0107017041, D.I. 228.

¹⁰ Del. Super. Ct. Crim. Dkt. No. 0107017041, D.I. 233.

¹¹ Del. Super. Ct. Crim. Dkt. No. 0107017041, D.I. 235.

not an opportunity to open the door to the Defendant to add any additional arguments that counsel could now conceive of, but to simply allow this Court to address the application of the *Allen* decision to the facts of this case. The Court has previously ruled on the Defendant's Rule 61 claims in its decision of August 29, 2008 and there is no reason to believe the Defendant's foreseeability arguments or his claims regarding intentional and felony murder could not have been raised in his original postconviction motion. As such, they are both time and procedurally barred and will not be considered.

6. The *Allen* decision by the Delaware Supreme Court was intended to explain the interaction of 11 *Del. C.* § 271 and § 274 and ruled that when offenses are divided into degrees, in addition to determining the individual mental state of each Defendant, the jury is also required to determine the Defendant's accountability for any aggravating factor or circumstance. It is this "accountability" language in the *Allen* decision that the Defendant now asserts was not properly instructed to the jury in his case. In particular the Defendant asserts that the *Allen* decision would have required the Court to instruct the jury regarding the various degrees of homicide and that they would be required to find the Defendant was accountable for the result, i.e. the death of the victim. The Court does not believe this was the intent of the *Allen* decision and will deny the Rule 61 petition.

7. The Court interprets the *Allen* decision to mean that whatever may be the unique qualifier that distinguishes the various degrees of a particular offense, it is that aggravating factor or circumstance that the jury must individually consider for each defendant. As an example, the distinguishing factor between Robbery First Degree and Robbery Second Degree is not the mental state of the Defendant as it is the same for both, but rather if a deadly weapon was involved or physical injury was caused to a non-participant in the crime. Thus for consideration of the various degrees of robbery, the jury would be required to consider the Defendant's accountability for the weapon or the injury caused the victim under the accomplice liability theory. The same is true for burglary of a dwelling where again the distinguishing factor is a weapon or physical injury. The Court believes it is the statutory aggravators that distinguish the degrees of a particular offense that is required to be considered under the *Allen* decision and the language of § 274.

8. The homicide statute's uniqueness, however, is generally unrelated to a particularized aggravating factor. The distinction between Murder First, Murder Second, Manslaughter and Criminally Negligent Homicide is the particular mental state of the Defendant. It is this finding by the jury that will distinguish the crimes and will insure the Defendant is being convicted of the crime that is related to his specific conduct. This Court refuses to expand the *Allen* decision as requested by the

Defendant to require the jury to make an individual finding that he intended or caused the result which in the Defendant's case would be the death of the Jack and Jill ice cream truck driver, Mr. Alameri. To do so would put the legal concept of accomplice liability into chaos and this Court believes would be an incorrect interpretation of the *Allen* decision. The only requirement mandated by the *Allen* decision is that the statutory factors that distinguish the degrees of a particular offense be individually considered for each defendant and the jury be required to consider that Defendant's culpability for that factor. Since there is no statutory aggravating factor beyond the Defendant's mental state for the homicide offenses charged in this case, the jury instructions given by the Court were consistent with the Supreme Court decision in *Chance v. State*¹² and were appropriate under the facts of this case and counsel was not ineffective for failing to request otherwise.

For the reasons set forth above, the Defendant's Second Motion for Postconviction Relief is hereby DENIED.

IT IS SO ORDERED.

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

¹² *Chance v. State*, 685 A.2d 351 (Del. 1996).