

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

FRANKLIN C. FORAKER,)	
)	
Defendant-Below, Petitioner,)	
)	
v.)	Case No. 70008668DI,
)	IN75-02-0882,
STATE OF DELAWARE,)	IN75-02-0883.
)	
Plaintiff-Below, Respondent.)	

Submitted: September 16, 2009
Decided: November 16, 2009

Upon Petitioner’s Motion for Postconviction Relief. **DENIED.**
Upon Petitioner’s Motion to Expand the Record Pursuant to Rule 61(g). **MOOT.**
Upon Petitioner’s Motion to Subpoena Records for Expansion of the Record Pursuant to Superior Court Criminal Rule 17(c) and (i). **MOOT.**
Upon Petitioner’s Motion for Default Judgment. **DENIED.**
Upon Petitioner’s Motion for Alternative Relief. **DENIED.**

OPINION AND ORDER

Franklin C. Foraker, *Pro Se.*

Loren C. Myers, Deputy Attorney General, Department of Justice, Wilmington, Delaware, for Appellee.

BRADY, J.

INTRODUCTION

Franklin C. Foraker (“Petitioner”) was convicted of Conspiracy in the First Degree and Murder in the First Degree in 1975. Petitioner moves for postconviction relief pursuant to Superior Court Rule 61, arguing that the autopsy report of the victim proves that she was murdered in Maryland, not Delaware, and, therefore, the State did not have territorial jurisdiction over the offenses of which he was convicted. Petitioner filed several other motions (“Related Motions”), including: (1) Motion to Expand the Record Pursuant to Rule 61(g); (2) Motion to Subpoena Records for Expansion of the Record Pursuant to Superior Court Criminal Rule 17(c) and (i); (3) Motion for Default Judgment; (4) Motion for Alternative Relief; and (5) Motion for Correction of Illegal Sentence. All of the Related Motions in one way or another request that the Court either compel certain individuals or entities to produce the autopsy report, or, grant a judgment in Petitioner’s favor for reasons related to the production of the autopsy report.

The Court has reviewed the Petitioner’s pleadings, the trial transcripts, and the autopsy report and finds that Petitioner’s claims are without merit. Petitioner’s Motion for Postconviction Relief is **DENIED**. To the extent that the Related Motions request that the Court compel the production of the autopsy report, the Court finds that they are **MOOT**. To the extent that the Related Motions request

that the Court order alternative forms of relief, those requests are hereby **DENIED** because Petitioner's claims are meritless.

FACTS

The facts, generally, are that Petitioner and his then-girlfriend, while with the victim, Margaret Essicks, strangled her in a car while they were in Delaware, and then threw her body over a bridge into a body of water in Maryland.¹

Petitioner moves for postconviction relief pursuant to Superior Court Rule 61. Petitioner claims that the report of the autopsy conducted on the body of the victim indicates that the victim had water in her lungs, suggesting that she was alive when she was thrown into the river. Petitioner claims that this evidence shows that the murder was committed in Maryland, not Delaware. Petitioner makes three arguments: (1) the State did not have territorial jurisdiction over the offense; (2) The prosecutor violated the requirements of *Brady v. Maryland*² by suppressing exculpatory evidence, specifically the Maryland autopsy report; and (3) that his counsel was ineffective because counsel failed to investigate the autopsy report and argue that the Court lacked jurisdiction.

The Court requested a response from the State, which was delayed due to difficulties the State incurred in attempting to get the report of the autopsy to review. During that delay, Petitioner filed the Related Motions. On October 22,

¹ For additional information, see *Foraker v. State*, 394 A.2d 208 (Del. 1978).

² 373 U.S. 83 (1963).

2008, Petitioner filed a Motion to Expand the Record Pursuant to Rule 61(g). In that Motion, Petitioner requested that the Court order the production of the Maryland autopsy report. The State responded to this Motion initially by letter to the Court, dated November 7, 2008. The State informed the Court that it had examined the appeal briefs from Petitioner's criminal trial to the Delaware Supreme Court, and could find no reference to an autopsy report.³ The State also informed the Court that it could not locate the autopsy report.⁴ In response to the State's letter, Petitioner filed a response and a Motion to Strike the State's attempt to expand the record by referring to the contents of the appeal briefs. On November 21, 2008, the State submitted a letter to the Court requesting an additional 45 days to locate the autopsy report. The Court granted that request.

On November 25, 2008, Petitioner filed a Motion to Subpoena Records for Expansion of the Record Pursuant to Superior Court Criminal Rule 17 (c) and (I). Petitioner requested that the Court issue subpoenas directed to the State Medical Examiner of the State of Maryland and the Chairman of the Delaware Board of Parole in order to compel the production of the Maryland autopsy report.

On January 5, 2009, the Court granted an extension, pursuant to the State's request, until February 6, 2009, for a response to Petitioner's Motion to Expand the Record to be filed.

³ See the State's letter to the Court, Docket Item ("D.I.") 11. See also D.I. 13.

⁴ D.I. 11, 13.

On February 27, 2009, Petitioner filed a Motion for Default Judgment pursuant to Superior Court Criminal Rule 57(d), based upon the State's failure to produce the Maryland autopsy report.

On March 9, 2009, Defendant filed a Motion for Alternative Relief, in which he requests that, in the event that the Court does not grant his Motion for Default Judgment, that the Court subpoena the transcript of the hearing before the Board of Parole in September of 2002. Petitioner claims that during this hearing, he was shown a copy of the Maryland autopsy report for the first time. Petitioner asserts that the report states that the victim had water in her lungs and died in Maryland by trauma and/or drowning. He moves this Court to subpoena the transcript of this hearing before the Board of Parole and conduct an evidentiary hearing pursuant to Superior Court Civil Rule 61(4)(H)(1).

On April 30, 2009, the State again apprised the Court regarding its attempts to locate the autopsy report. On June 16, 2009,⁵ the State sent the Court a certified copy of the autopsy report from the Office of the Chief Medical Examiner for the State of Maryland. The autopsy report states that Ms. Essicks "died as a result of asphyxia due to strangulation,"⁶ not drowning as a result of being thrown off a bridge, as Petitioner now argues.

⁵ The Court expresses its concern with the lack of a more timely provision of the report by the State. The action that was taken to secure the report could have been undertaken in a far more expeditious manner.

⁶ See Autopsy Report, attached as Exhibit "A", at page 4.

STANDARD OF REVIEW

The Court must first address the procedural requirements of Superior Court Criminal Rule 61(i) (“Rule 61”) before considering the substantive merits of the Defendant’s claims.⁷ If the Defendant’s claims are procedurally barred under any subsection of Rule 61(i)(1)-(4), the Court should not address the merits of the individual claims.⁸ The procedural requirements set forth in Rule 61(i)(1)-(4) are as follows: (1) the motion must be filed no more than one year after the judgment of conviction is final;⁹ (2) any ground for relief that was not asserted in a prior postconviction proceeding is thereafter barred unless consideration of the claim is warranted in the interest of justice;¹⁰ (3) any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is thereafter barred unless the movant shows (A) cause for relief from the procedural default and (B) prejudice from violation of the movant's rights;¹¹ and (4) any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas

⁷ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991). *See also State v. Stokes*, 2008 WL 3312809 at *1 (Del. Super. Aug. 11, 2008); *State v. Benson*, 2008 WL 4140767 at *2 (Del. Super. Aug. 26, 2008).

⁸ *See Stokes*, 2008 WL 3312809 at *1; *Benson*, 2008 WL 4140767 at *2. *See also DeShields v. Snyder*, 829 F. Supp. 676 (D. Del. 1993).

⁹ Super. Ct. Crim. R. 61(i)(1).

¹⁰ Super. Ct. Crim. R. 61(i)(2).

¹¹ Super. Ct. Crim. R. 61(i)(3).

corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.¹²

The procedural bars set forth in Rule 61(i)(1)-(3), however, do not apply “to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”¹³

Petitioner’s primary argument is that the State did not have territorial jurisdiction over the offense because the autopsy of the victim establishes that she died of drowning as a result of being thrown off a bridge in Maryland. Petitioner’s claim for Postconviction Relief clearly falls within the provisions of Rule 61(i)(5). Therefore, the procedural bars set forth in Rule 61(i)(1)-(3) do not apply, and the Court will address Petitioner’s claim.

ANALYSIS AND CONCLUSION

The Petitioner contends that the State “suppressed” the autopsy report and that he did not previously raise the issue in his direct appeal or in previous post conviction pleadings because he did not “discover” it until recently, when he appeared before the Board of Parole.¹⁴

¹² Super. Ct. Crim. R. 61(i)(4).

¹³ Super. Ct. Crim. R. 61(i)(5).

¹⁴ Def.’s Mot. for Postconviction Relief, at 12.

The transcript of the trial reveals differently. First, the defense clearly had the autopsy report¹⁵ and defense counsel extensively questioned the pathologist about the contents of that report.¹⁶

Additionally, the pathologist was specifically asked by the Deputy Attorney General if there was any evidence that the death was caused by drowning, and the response was “No, sir.”¹⁷ Finally, the report was introduced as an exhibit at trial.¹⁸

Having reviewed the transcript and the autopsy report recently provided by the State, the Court finds that Petitioner’s claims are meritless. Petitioner’s contention that the victim was alive when she was thrown into the river has no basis in fact. Dr. Ann Dixon, the physician who performed the autopsy, testified at Petitioner’s criminal trial. Dr. Dixon testified that there was no evidence that the victim died by drowning; rather, she “died as a result of asphyxia due to strangulation, and that the strangulation was inflicted by means of a ligature.”¹⁹

Petitioner’s claim that the autopsy report was suppressed by the State is false. A copy of the autopsy report was admitted into evidence at trial and discussed at length during Dr. Dixon’s testimony.²⁰ Petitioner’s contention that the victim was alive when she was thrown into the river has no factual basis. For these

¹⁵ T. Transcript (11/20/75) at 38.

¹⁶ The cross-examination of the pathologist continues for approximately 35 pages of the trial transcript.

¹⁷ T. Transcript (11/20/75) at 17.

¹⁸ State’s Ex. 19 at 38.

¹⁹ T. Transcript (11/20/75) at 11.

²⁰ T. Transcript (11/20/75) at 38.

reasons, Petitioner's contention that the Delaware courts lack jurisdiction over the offenses fails.

Petitioner also argues that his trial counsel were ineffective for failing to determine whether an autopsy report existed, and for failing to challenge Delaware's jurisdiction over the Murder in the First Degree charge. The Court has reviewed the transcript of Dr. Dixon's testimony and determined that Petitioner's counsel were fully aware of the autopsy report. They, in fact, moved the report into evidence at trial.²¹ Given that counsel were aware of the autopsy report and knew that it does not state that the victim died of drowning, counsel could not have been ineffective for failing to assert a jurisdictional defense to the crime. Petitioner's claim of ineffective assistance of counsel, therefore, fails. Petitioner's Motion for Postconviction Relief is **DENIED**.

In addition to denying Petitioner's Motion for Postconviction Relief, the Court also denies the relief requested by Petitioner in the Related Motions. Many of the Related Motions, in one way or another, request that the Court take action by compelling certain individuals or entities to produce the autopsy report. The Court has, since the filing, received a copy of the autopsy report and found that there is no merit to Petitioner's claims. Therefore, to the extent that the Related Motions request that the Court compel the production of the autopsy report, the Court finds

²¹ T. Transcript (11/20/75) at 36-7.

that they are **MOOT**. To the extent that the Related Motions request that the Court order alternative forms of relief, those requests are hereby **DENIED** because Petitioner's claims are meritless.

This Order resolves all outstanding matters in this case.

IT IS SO ORDERED.

_____/s/_____

M. Jane Brady
Superior Court Judge