

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

December 16, 2009

Chad McCloskey  
SBI No. 00  
Sussex Correctional Institution  
P.O. Box 500  
Georgetown, DE 19947

**RE: State of Delaware v. Chad McCloskey**  
**Def. ID No. 0612005942**  
**Letter Opinion**

Date Submitted: September 18, 2009

Dear Mr. McCloskey:

This is my decision on your Motion for Postconviction Relief. You were convicted of a number of charges arising out of a string of burglaries and thefts that occurred over a three month period of time in 2006. The Supreme Court upheld your convictions in a decision dated January 27, 2009.<sup>1</sup> You argue that you should get a new trial because (1) the trial court allowed inadmissible hearsay during your trial, (2) a witness perjured himself during your trial, (3) the prosecutor committed misconduct during your trial, and (4) your lawyer did not effectively represent you during your trial. You were represented by Dean C. Johnson, Esquire. The State of Delaware was represented by Donald R. Bucklin, Esquire. Johnson and Bucklin have submitted affidavits responding to your allegations. This is your first Motion for Postconviction Relief and it was filed in a timely manner. I have concluded that, given the nature of your allegations, a hearing is not necessary.

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<sup>1</sup> *McCloskey v. State*, 966 A.2d 348 (Table), 2009 WL 188857 (Del. Jan. 27, 2009).

Your first three claims are barred by Superior Court Criminal Rule 61(i)(3) and (4) because they could have been raised on appeal and were not, or were raised on appeal and rejected by the Supreme Court. As to those claims that could have been raised on appeal, you have not met the requirements set forth in Rule 61(i)(3) and (5) requiring consideration of those claims now. As to those claims that were raised on appeal and rejected by the Supreme Court, you have not met the requirements set forth in Rule 61(i)(4) for reconsideration of those claims now.

You allege that Johnson was ineffective because he (1) failed to investigate, locate and question the State's witness, (2) failed to talk to your alibi witness, (3) failed to obtain your medical records, and (4) withheld discovery from you. The United States Supreme Court has established the proper inquiry to be made by courts when deciding a motion for postconviction relief.<sup>2</sup> In order to prevail on a claim for ineffective assistance of counsel pursuant to Superior Court Criminal Rule 61, the defendant must engage in a two-part analysis.<sup>3</sup> First, the defendant must show that counsel's performance was deficient and fell below an objective standard of reasonableness.<sup>4</sup> Second, the defendant must show that the deficient performance prejudiced the defense.<sup>5</sup> Further, a defendant "must make and substantiate concrete allegations of actual prejudice or risk summary dismissal."<sup>6</sup> It

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<sup>2</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

<sup>3</sup> *Strickland*, 466 U.S. at 687.

<sup>4</sup> *Id.* at 687.

<sup>5</sup> *Id.* at 687.

<sup>6</sup> *State v. Coleman*, 2003 WL 22092724 (Del. Super. Feb. 19, 2003).

is also necessary that the defendant “rebut a ‘strong presumption’ that trial counsel’s representation fell within the ‘wide range of reasonable professional assistance,’ and this Court must eliminate from its consideration the ‘distorting effects of hindsight when viewing that representation.’”<sup>7</sup> There is no procedural bar to claims of ineffective assistance of counsel.<sup>8</sup>

**a. The State’s Witnesses**

You allege that Johnson failed to locate, investigate and question the State’s witnesses. You do not state which of the State’s witnesses Johnson failed to locate, investigate and question. You also do not state how this prejudiced your defense. I note that your case was tried twice, which allowed you and Johnson to get a preview of the State’s case against you and to question the State’s witnesses twice. This allegation is conclusory and without merit.

**b. The Defendant’s Alibi Witness**

You allege that Johnson failed to talk to Greg Bannister, your alibi witness. Johnson stated that he spoke with Bannister by phone, but that Bannister told Johnson he did not know anything and did not want to testify. You also allege that Johnson failed to contact your brother and sister-in-law, James McCloskey and Jessica Martinez. This is simply not correct. James McCloskey and Jessica Martinez both testified at your trial. This allegation is conclusory and without merit.

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<sup>7</sup> *Coleman*, 2003 WL at \*2, quoting *Strickland*, 466 U.S. at 689.

<sup>8</sup> *Coleman*, 2003 WL at \*1, citing *State v. Johnson*, 1999 WL 7435612, at \*1 (Del. Super. Aug. 12, 1999); *State v. Gattis*, 1995 WL 790961, at \*3 (Del. Super. Dec. 28, 1995) at 7, *aff’d*, 637 A.2d 1174 (Del. 1997).

**c. The Defendant's Medical Records**

You allege that Johnson was ineffective because he did not obtain your medical records. Your argument is that you were physically unable to commit the crimes because your arm was badly injured in a motorcycle accident. Johnson stated he did not obtain your medical records because he did not believe it was necessary to do so. Johnson was correct. You testified about the injuries you suffered to your arm and the limitations caused by those injuries. Moreover, the surveillance video of you bagging groceries at the grocery store after you committed the burglary at Alden Hopkins' home showed how limited your arm was. The point that you wanted to make was clearly made. The jury simply rejected it. This allegation is conclusory and without merit.

**d. Discovery material**

You allege that Johnson withheld discovery from you. You do not state what discovery was withheld from you. You also do not state how this prejudiced your defense. This allegation is conclusory and without merit.

**CONCLUSION**

Your Motion for Postconviction Relief is DENIED.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary's Office  
Donald R. Bucklin, Esquire  
Dean C. Johnson, Esquire