

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

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

December 18, 2009

Carlos Ortiz
SBI No. 00
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

Re: State of Delaware v. Carlos Ortiz
Def. ID No. 0208005710
Letter Opinion

Date Submitted: October 28, 2009

Dear Mr. Ortiz:

This is my decision on your Second Motion for Postconviction Relief. You were convicted of two counts of Rape in the First Degree, one count of Attempted Rape in the First Degree, six counts of Possession of a Firearm During the Commission of a Felony, one count each of Kidnaping in the First Degree, Possession of a Firearm by a Person Prohibited, Burglary in the First Degree, Aggravated Menacing, Terroristic Threatening, Criminal Contempt, and three counts of Endangering the Welfare of a Child. I sentenced you to 84 years at Supervision Level V, suspended after serving 68 years for declining levels of probation. The Supreme Court affirmed your convictions on January 15, 2004.¹ I denied your First Motion for Postconviction Relief on March 22, 2007. In your Second Motion for Postconviction Relief you seek a new trial based upon the “illegal entry of testimonial statements” during your trial.

¹ *Ortiz v. State of Delaware*, 841 A.2d 308, 2004 WL 77860 (Del. Jan. 15, 2004).

Your Second Motion for Postconviction Relief is barred by Superior Court Criminal Rule 61(i)(1). This rule provides that a “Motion for Postconviction Relief may not be filed more than one year after the judgment is final...”² Prior to a change in Rule 61 that became effective on July 1, 2005, the time limit to file a Motion for Postconviction Relief was three years. The cut-off date for you to file a Motion for Postconviction Relief was January 15, 2007. You filed your Second Motion for Postconviction Relief almost three years after the cut-off date. Therefore, your Second Motion for Postconviction Relief is barred by Superior Court Criminal Rule 61(i)(1).

The bar to relief under Rule 61(i)(1) does 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, or fairness of the proceedings leading to the judgment of conviction.”³ You have not raised a colorable claim that requires consideration under this exception. Furthermore, you have not stated with any specificity at all what statements were entered illegally, how those statements relate to the legal authority you rely upon, and how those statements prejudiced your defense. Quite simply, your Second Motion for Postconviction Relief is merely conclusory.

CONCLUSION

Your Second Motion for Postconviction Relief is denied.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

²Superior Court Criminal Rule 61(i)(1).

³ Superior Court Criminal Rule 61(i)(5).