

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

STATE OF DELAWARE,	)	
	)	
	)	
v.	)	ID#: 9503004907
	)	
ANDRE A. RIVERA,	)	
Defendant.	)	

**ORDER**

**Upon Defendant’s Fourth Motion for Postconviction Relief –  
*SUMMARILY DISMISSED***

1. On August 17, 2009, Defendant filed this, his fourth motion for postconviction relief. He filed a supplemental pleading on September 2, 2009.
2. Defendant is serving a mandatory life sentence under 11 *Del. C.* § 4214(b) because, in 1995, a jury found him guilty of four, second degree burglaries, and he was sentenced to four mandatory life sentences.
3. Defendant’s conviction was affirmed on direct appeal in 1996.<sup>1</sup> Since then, Defendant has filed serial motions for postconviction relief.
4. Defendant argues now that the mandatory sentences violate the Eighth Amendment because burglary in the second degree is “classified as non-

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<sup>1</sup>*Rivera v. State*, 1996 WL 191018 (Del. Supr. April 3, 1996).

violent . . . .” Actually, Delaware considers burglary in the second degree to be a violent offense.<sup>2</sup> And, it is specifically denominated as a predicate and triggering offense for 11 *Del. C.* § 4214(b)’s purposes.

5. Defendant also argues, as he has in the past, that a mandatory life sentence for burglary in the second degree amounts to cruel and unusual punishment under the Eighth Amendment. That claim has been rejected in this case previously, and in others.<sup>3</sup>

6. Defendant’s third ground for relief is his claim that four mandatory life sentences is “grossly disproportionate to the crimes committed.” The court continues to call the sentence harsh and worse than it would have imposed if it had discretion. Nevertheless, taking Defendant’s criminal history and the mandatory sentencing statute into account, it cannot be said that the sentence is disproportionate, and, therefore, unconstitutional.

7. Finally, Defendant argues: “Movant is a Hispanic male who had no idea of the complexities of law or litigation.” That argument seems, indirectly, to address Superior Court Criminal Rule 61's procedural requirements.<sup>4</sup> As such, that

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<sup>2</sup>11 *Del. C.* § 4201(c).

<sup>3</sup>*See, e.g., Hembree v. State*, 1997 WL 33103, at \*2 (Del. Supr. Jan. 7, 1997); *Martinez v. State*, 1996 WL 526255, at \*1 (Del. Supr. Sept. 9, 1996); *State v. McLaughlin*, 1997 WL 718658, at \*2 (Del. Super. Aug. 8, 1997).

<sup>4</sup> Super. Ct. Crim. R. 61(i)(3).

argument should have been advanced long before now.

For the foregoing reasons, after proper referral and preliminary review,<sup>5</sup> it appears that Defendant's motion is subject to summary dismissal.<sup>6</sup> Defendant's fourth Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

The above notwithstanding, the court appreciates that Defendant has served almost fifteen years and is without prospects for release. Accordingly, by copy of this order, the court commends Defendant to the Public Defender's attention. If the Public Defender believes that it is in the interest of justice,<sup>7</sup> the court will re-appoint the Public Defender.<sup>8</sup> Meanwhile, the court sees no reason to do that now, *sua sponte*.

**IT IS SO ORDERED.**

Date: November 24, 2009

/s/ Fred S. Silverman  
Judge

cc: Prothonotary (Criminal Division)  
pc: J. Brendan O'Neill, Public Defender  
Paul D. Wallace, Deputy Attorney General  
Andre A. Rivera, Defendant

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<sup>5</sup> Super. Ct. Crim. R. 61(d)(1).

<sup>6</sup> Super. Ct. Crim. R. 61(d)(4).

<sup>7</sup> 29 Del. C. § 4604(2).

<sup>8</sup> 29 Del. C. § 4602(a)(2).