

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

December 1, 2009

N440 State Mail
James A. Biggins
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

**RE: Defendant's ID No. 9609015504 (R-5)
Defendant's Fifth (5th) Motion for Postconviction Relief
Pursuant to Superior Court Criminal Rule 61**

Dear Mr. Biggins:

I incorporate the history of your conviction and post-trial motions and writs as outlined in my April 28, 2009 decision denying your fourth postconviction motion.

In your present motion, you allege the following: (i) the State committed error as to recordings of telephone conversations in which inculpatory comments were made by you; (ii) ineffective assistance of counsel as to the communications with you concerning waiving the preliminary hearing; and (iii) the Court should not have given lesser included options to the jury.

You were convicted over twelve (12) years ago. As outlined in the April 28, 2009 decision, you have filed everything but the kitchen sink.

The present motion is denied for being untimely (Rule 61(i)(1)); repetitive (Rule 61(i)(2)); for failing to raise any of the alleged grounds in a timely manner at trial, or on appeal, and establishing prejudice. (Rule 61(i)(3)).

The present motion is denied.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

THG:baj
cc: Prothonotary
Department of Justice