

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

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

December 7, 2009

N440 STATE MAIL
Lynwood Taylor
Sussex Correctional Institution
P. O. Box 500
Georgetown, DE 19947

**RE: State v. Lynwood Taylor
Motion for Postconviction Relief
Defendant ID No. 0703029123 (R-1)**

Dear Mr. Taylor:

On December 2, 2009, the Court received your Motion for Postconviction Relief filed pursuant to Superior Court Criminal Rule 61 ("Rule 61"). This is the Court's decision as to your motion.

BACKGROUND

Following a jury trial, you were convicted of six (6) counts of rape in the first degree, one count of continuous sexual abuse of a child, and one count of endangering the welfare of a child. The jury rendered a verdict on December 17, 2007.

A Motion for Judgment of Acquittal was filed on December 19, 2007, and denied on January 15, 2008.

At sentencing on February 15, 2008, you received the mandatory sentence on each offense, for a total of 115 years.

The convictions were affirmed by the Delaware Supreme Court. *Taylor v. State*, 2008 WL 5412205 (Del. Dec. 24, 2008).

The Motion is timely filed, but other procedural bars will be discussed below.

In the present Motion, you allege six grounds in a conclusory manner:

(1) Ground One: Speedy trial. You allege an April 12, 2007, arrest and a December 10, 2007, trial. You allege you were not allowed to go to work or church, and had to put your life on hold.

This ground is procedurally barred in that it could have and should have been made prior to trial. Rule 61(i)(3) bars claims that should have been timely presented to the Court unless the movant establishes cause for the delay and actual prejudice. Neither has been established. As an aside, the Court notes that it is not unusual at all for such a serious case to take from April to December to be tried.

(2) Ground Two: You allege the victim recanted. This matter is procedurally barred. In June 2009, a Motion for a New Trial was filed based upon recantation and/or admission of lying by the victim. On August 21, 2009, the Motion was denied, and there was no appeal. This matter is barred because it has been previously adjudicated. Rule 61(i)(4).

(3) Ground Three: You claim that your Miranda rights were not read to you, and your lawyer told you it did not matter. This ground is procedurally barred as any attempt to suppress evidence must be filed prior to trial. You do not allege any inculpatory statements by you that should have been suppressed. You offer no cause for not raising this claim at trial, nor do you offer any prejudice. Therefore, this ground is barred. Rule 61(i)(3). Since you have always claimed you are innocent, your attorney's comment was appropriate, i.e., what was there to suppress?

(4) Ground Four: You claim that a discovery violation occurred concerning the victim's second journal or diary. This was the subject of a trial ruling that was raised in the direct appeal. It is barred as being formerly adjudicated. Rule 61(i)(4).

(5) Ground Five: In this allegation, you make several ineffective assistance of counsel claims. They are (a) failure to investigate; (b) did not do his job right because needed to be paid; (c) did not ask the questions you wanted asked; (d) did not tell you he was a child advocate attorney (in Family Court), which was a conflict of interest.

To prevail on a claim of ineffective assistance of counsel, a defendant must establish that (i) his trial counsel's representation fell below an objective standard of reasonableness; and (ii) but for counsel's unprofessional errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U. S. 668, 687-88 (1984). The defendant must set forth and substantiate concrete allegations of actual prejudice. *Younger v. State*, 580 A.2d 552, 556 (Del. 1990). Moreover, there is a "strong presumption" that counsel's representation was professionally reasonable. *Strickland v. Washington*, 466 U. S. at 689.

This claim is denied as it is purely conclusory without any specific allegations, details, or harm being pled.

(6) Ground Six: No DNA or medical evidence. Apparently, you are alleging you cannot be convicted without DNA or other forensic evidence. That is not the case at all. The allegations in this case came from your adult daughter as to acts occurring when she was in the seventh or eighth grade. The likelihood of any physical evidence at the time of your arrest would be remote. The jury heard all of the evidence, including your denial, and convicted you. This ground is denied as being without any basis. It is also denied as you raised the sufficiency of the evidence on direct appeal and the issue was adjudicated. Rule 61(i)(4).

For the reasons stated above, the Motion for Postconviction Relief is denied.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

THG:baj

cc: Prothonotary
Adam D. Gelof, Esquire
Bruce D. Rogers, Esquire