

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
 v.) ID No. 0612022950
)
 RYEKI STEWART)
)
 Defendant.)

Submitted: June 23, 2010

Decided: July 27, 2010

On Defendant's Motion for Postconviction Relief - DENIED

OPINION

Brian D. Ahern, Department of Justice, 820 North French Street, Wilmington, Delaware, 19801. Attorney for the State of Delaware.

Ryeki Stewart, James T. Vaughn Correctional Center, Smyrna, Delaware.
Pro Se Defendant.

CARPENTER, J.

On this 27th day of July, 2010, upon consideration of Defendant's Second *Pro Se* Motion for Postconviction Relief and Defendant's Motion to Stay, it appears to the Court that:

1. On June 22, 2010, Ryeki Stewart ("Defendant") filed a Second *Pro Se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61") and a Motion to Stay his postconviction motion until the result of Defendant's federal habeas corpus has been decided. For the reasons set forth below, Defendant's Second *Pro Se* Motion for Postconviction Relief and Motion to Stay is **DENIED**.

2. On January 22, 2007, Defendant was indicted on four counts: (1) Trafficking in Cocaine; (2) Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance; (3) Use of a Vehicle for Keeping Controlled Substances; and (4) Resisting Arrest. A stipulated trial was held on June 19, 2007 and Defendant was found guilty on all counts. On March 14, 2008, the Delaware Supreme Court affirmed Defendant's convictions. The Defendant then filed his First Motion for Postconviction Relief on April 16, 2008, which was denied by this Court on September 24, 2008 and affirmed by the Delaware Supreme Court on February 27, 2009. Defendant then filed this Second *Pro Se* Motion for Postconviction Relief on June 22, 2010.

3. Prior to addressing the merits of a postconviction relief claim, the Court must first determine whether the Motion meets the procedural requirements of Rule 61(i).¹ This section of Rule 61 sets forth procedural bars governing the proper filing of a motion for postconviction relief: (1) the motion must be filed within one year of the final judgment of conviction; (2) any ground for relief not raised in a prior post conviction motion will be barred if raised in the instant Motion; (3) any claims which the Defendant failed to assert in the proceedings leading to his conviction are barred, unless he is able to show cause for relief from the procedural default and prejudice from violation of the movant's rights; and (4) any ground for relief raised in this Motion must not have been formerly adjudicated in any proceeding leading to the conviction, unless the interest of justice requires reconsideration.²

4. After reviewing the Defendant's Second *Pro Se* Motion for Postconviction Relief, Defendant's Motion is untimely and procedurally barred under Rule 61(i)(1). Under Rule 61(i)(1), a motion for postconviction relief is to be filed no later than one year from the date a defendant's conviction is final. Here, the Defendant's conviction was final on March 14, 2008. Therefore a timely motion would have been filed no later than March 14, 2009. This motion was filed on June 22, 2010, over a year after the one-year deadline. As such Defendant's motion is untimely and is procedurally barred.

¹See *Maxion v. State*, 686 A.2d 148,150 (Del. 1996).

²Super. Ct. Crim. R. 61(i)(1)-(5); see also *State v. Greer*, 2008 WL 1850625 (Del. Super. Mar. 4, 2008).

5. Defendant's second ground for relief alleging ineffective assistance of counsel when counsel failed to challenge medical reports is also procedurally barred under Rule 61(i)(4). It is well settled law that a defendant is not entitled to have a court re-examine issue that have been previously resolved "simply because the claim is refined or restated."³ This ground for relief has already been addressed by the Court in Defendant's First Motion for Postconviction Relief⁴ and because Defendant's Second *Pro Se* Motion for Postconviction Relief does not indicate how the ground merits review in the "interest of justice," the Court will dismiss this ground.

6. Defendant's remaining grounds for relief are also barred under Rule 61(i)(2) because Defendant failed to raise these grounds in his first postconviction relief motion. However, even if the Court was to address the Defendant's claims based on "new case law" asserted by the Defendant, the Defendant has not articulated to the Court how these cases affect his case and how the outcome of his case would be different.

7. Lastly, the Defendant's Motion to Stay will be denied by the Court because his Second *Pro Se* Motion for Postconviction is procedurally barred and will not be reviewed by this Court.

³ Super. Ct. Crim. R. 61(i)(4).

⁴ *State v. Stewart*, 2008 WL 4455641, at *1 (Del. Super. Sept. 24, 2008).

8. For the reasons set forth above, the Defendant's Second *Pro Se* Motion for Postconviction Relief and Motion to Stay are hereby **DENIED**.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.