

Resisting Arrest and Possession of Drug Paraphernalia. He was declared a habitual offender pursuant to 11 Del. C. § 4214(b) and sentenced to life imprisonment at Level V.

2. On January 12, 2006, Mr. Walley moved to correct his sentence pursuant to Superior Court Criminal Rule 35(a). This Court, by order dated June 16, 2006, denied the motion. The Defendant appealed that denial to the Delaware Supreme Court, which on January 11, 2007, affirmed this Court's decision.¹

3. The Defendant filed his first motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on June 29, 2007.² That motion was denied by the Court pursuant to Rules 61(i)(1) and 61(i)(3) as being time barred and without merit. The Delaware Supreme

¹ *Walley v. State*, 918 A.2d 339 (Table) (Del. 2007) (claim that Superior Court improperly failed to hold a separate hearing to determine habitual offender status was a claim that sentence was imposed in an illegal manner and thus was required to be asserted within 90 days of sentencing).

² Further references to the criminal rules of the Superior Court shall hereinafter be cited as "Rule ____".

Court again affirmed this Court's decision.³

4. On June 9, 2010, Mr. Walley filed his second motion for postconviction relief pursuant to Rule 61 which was referred to Superior Court Commissioner Lynne M. Parker pursuant to 10 *Del. C.* § 512(b) and Rule 62 for proposed findings of fact and recommendations for disposition. The Commissioner issued her Report and Recommendation on July 15, 2010 recommending that Mr. Walley's motion for postconviction relief be summarily dismissed.

5. The Defendant filed a motion for reconsideration from the Commissioner's Report and Recommendation on July 29, 2010. He first argues that he did not receive the document in question until July 21, 2010. Therefore, if his motion for reconsideration was untimely filed he requests the Court nonetheless consider his motion given the delay in his receipt of the Commissioner's submission. Second, assuming *arguendo* that his motion was timely filed, Mr. Walley contends that the Commissioner misconstrued his arguments and made

³ *Walley v. State*, 2008 WL 5220858 (Del. Dec. 15, 2008).

numerous errors of fact as well as errors of law in addressing his efforts to obtain postconviction relief.

6. Superior Court Criminal Rule 62(a)(4)(ii) states that within ten days after filing of a Commissioner's proposed findings of fact and recommendations any party may serve and file written objections to that report that sets forth with particularity the basis for those objections. Mr. Walley's motion for reconsideration is untimely on its face because it was not filed within ten days of the Commissioner's Report. However, the Court will accept Mr. Walley's representation that he did not receive the report until July 21 and accept his protest as timely filed.

7. The Court, having reviewed *de novo* the Commissioner's Report and Recommendation pursuant to Superior Court Criminal Rule 62 as well as Mr. Walley's response thereto, hereby accepts and adopts the Report and Recommendation so issued on July 15, 2010 in its entirety. The Court must conclude that Mr. Walley's arguments are repetitive and wholly without merit. They

were carefully and fully considered in the Commissioner's Report and Recommendation, Mr. Walley's direct appeal, and Mr. Walley's first motion for postconviction relief.⁴

Based upon the foregoing, the Court concludes that the Defendant's second motion for postconviction relief must be, and hereby is, **denied**.

IT IS SO ORDERED.

TOLIVER, JUDGE

⁴ See *Walley v. State*, 2008 WL 5220858, see also *Walley v. State*, 918 A.2d 339 (Table).