SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

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

September 9, 2010

Linda L. Charbonneau
SBI# 004
BWCI
660 Baylor Boulevard
New Castle, DE 19720

RE: *State of Delaware v. Linda L. Charbonneau*, Def. ID# 0207003810

DATE SUBMITTED: June 16, 2010

Dear Ms. Charbonneau:

Pending before the Court is a motion of Linda L. Charbonneau ("defendant"). Although she labels her motion as one for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"), the remedy she requests is a sentence reduction pursuant to Superior Court Criminal Rule 35(b) ("Rule 35(b)"). This is my decision denying the motion.

In July, 2002, defendant was indicted on numerous counts in connection with the deaths of John E. Charbonneau ("John") and William H. Sproates ("Sproates"). She was charged with murder in the first degree as to each victim, conspiracy in the first degree as to each victim and possession of a deadly weapon as to the murder of Sproates. Also indicted were Mellissa Rucinski ("Rucinski"), defendant's daughter, and Willie Tony Brown ("Brown"). A jury convicted defendant as charged. This Court sentenced her to death.

Defendant appealed the judgment and sentence to the Supreme Court. The Supreme Court reversed, concluding that the Superior Court's ruling on defendant's motion *in limine* resulted in an unfair trial. *Charbonneau v. State*, 904 A.2d 295 (Del. 2006). However, the Supreme Court upheld other rulings of the Superior Court, in particular, its denial of defendant's motion for judgment of acquittal. *Id.* at 315-316.[1]

The matter was returned to Superior Court where it was placed back on a trial track. Defendant decided to plead guilty to a charge of murder in the second degree with regard to John's death in exchange for the State of Delaware ("the State") nolle prossing the remaining four counts. She entered that plea, knowingly and voluntarily, on March 5, 2007. On May 25, 2007, she was sentenced to twenty (20) years at Level 5, with credit for time served, followed by six months at Level 4, Work Release. The first ten years of the sentence is mandatory pursuant to 11 *Del. C.* § 635; the Level 5 time is to be served pursuant to 11 *Del. C.* §4204(k). Subjecting the sentence to the § 4204(k) condition precludes defendant from receiving good time credits.

Defendant did not appeal her sentence. However, she did file a motion for a sentence modification wherein she requested that the sentence be suspended after serving 10 years at Level 5. The Court denied the motion. *State v. Charbonneau*, Del. Super., Def. ID# 0207003810, Stokes, J. (Nov. 30, 2007). Defendant did not appeal this decision.

On June 14, 2010, defendant filed the pending motion. In that motion, she advances

---

[1]The Supreme Court ruled at page 315:

> We hold that there was sufficient evidence to support the State's theory that Linda, Mellisa, and Brown conspired and developed a plan to kill John and Sproates, and to support a jury finding that the conspiracy existed beyond a reasonable doubt.

several grounds for relief. The first is labeled, "New Rule of Law." She claims that in 2009, the Delaware Supreme Court ruled that "`bit players in major felonies - like murder - will no longer be automatically treated as if they were the primary lawbreaker.'" Ground One of Defendant's Motion for Postconviction Relief. The second ground she advances is that her actions in the offense leave her less culpable than those of her co-defendants. She explains the third ground, "mandatory 10 years not 20 years", by asserting that once she completes the 10 years of mandatory time, then she qualifies for a suspended sentence on the balance of Level 5 time.

Defendant argues that the 2009 Supreme Court ruling regarding the "bit players" is new law and it provides an exception to the otherwise applicable procedural bars of Rule 61. Defendant does not provide a citation to support this "new law." Defendant clarifies that she does not wish to withdraw her guilty plea "but given the circumstances surrounding this case she requests suspension of sentence for all time following the 1st Ten years that are mandatory." Defendant's Memorandum in Support of Motion for Post-Conviction Relief at 4. She argues later:

> Now, there is a rule that makes [defendant's] sentence "excessive" because she did not kill anyone, nor did she plan to kill anyone. She therefore contends her plea to be unknowing of all elements of the criminal involvement as to the excessive sentence only. [Emphasis in original].

Id. at 12.

Defendant then advances her version of the facts which, according to her, fit her within the alleged rule of law that "bit players" are not as responsible for murders as other players. Defendant also argues it would be in the interest of justice to modify her sentence.

Defendant is attempting to use the provisions of Rule 61 to obtain a sentence reduction

pursuant to Rule 35(b).[2] She apparently does not want her plea vacated, as would occur if her Rule 61 motion was valid, because then the State would retry her on first degree murder charges and she would once again face the death penalty.

The motion is not one for postconviction relief and I deny it on that ground.

Even if I considered the motion to be one for postconviction relief, it fails. First, it is procedurally barred. Super. Ct. Crim. Rule 61(i).[3] It is untimely and the issues defendant raises

---

[2]In Super. Ct. Crim. R. 35(b), it is provided in pertinent part:

> (b) *Reduction of sentence.* The court may reduce a sentence of imprisonment on a motion made within 90 days after the sentence is imposed. ... The court will consider an application made more than 90 days after the imposition of sentence only in extraordinary circumstances .... The court will not consider repetitive requests for reduction of sentence. ***

[3]In Rule 61(i), it is provided as follows:

> *Bars to relief.* (1) Time limitation. A motion for postconviction relief may not be filed more than one year after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.
> (2) Repetitive motion. Any ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim in warranted in the interest of justice.
> (3) Procedural default. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows
> (A) Cause for relief from the procedural default and
> (B) Prejudice from violation of the movant's rights.
> (4) Former adjudication. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.
> (5) Bars inapplicable. The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional

should have been raised in the proceedings leading to conviction. In order to overcome the procedural bars, defendant has invoked the alleged 2009 ruling of the Supreme Court that bit players are not as responsible for crimes as the major players. However, defendant does not provide a citation for this rule of law. This Court is unaware of any such law and research failed to produce any such law. The claim is denied because defendant fails to support her argument with any substantive decision.

The Court speculates that defendant is referring to the decision in *Allen v. State*, 970 A.2d 203 (Del. 2009) ("*Allen*"), where the Supreme Court held that for offenses divided into degrees, the jury must make an "'individualized determination of the defendant's mental state and culpability for any aggravating fact or circumstances.'" *Allen v. State*, 970 A.2d at 213. If *Allen* is the case to which defendant is referring, her argument fails for several reasons. Most importantly, *Allen* does not apply because defendant pled guilty. *State v. Dailey*, 2009 WL 2219265 (Del. Super. May 13, 2009), *aff'd*, 981 A.2d 1172, 2009 WL 3286024 (Del. Oct. 13, 2009) (TABLE). Furthermore, *Allen* is not retroactively applicable on collateral review and therefore, does not provide an exception to Rule 61's procedural bars. *Richardson v. State*, – A.2d –, 2010 WL 2722690 (Del. 2010). Thus, defendant has failed to overcome the procedural bars imposed by Rule 61 and the motion is denied.

Defendant, to repeat, is actually seeking a sentence reduction. Her motion is untimely. Defendant has advanced the same arguments she advanced at the time of her sentencing and in her previous motion for a sentence reduction. Thus, it is repetitive. Furthermore, defendant has

---

violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

not advanced any extraordinary circumstances which would cause this Court to reconsider her sentence. Consequently, the motion for a sentence reduction is denied.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
Paula T. Ryan, Esquire
Craig A. Karsnitz, Esquire
Thomas A. Pedersen, Esquire