

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

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

May 27, 2010

Gary L. Maddox
James T. Vaughn Correctional Center
Unit Building 19-BL3
1181 Paddock Road
Smyrna, DE 19977

RE: State v. Gary L. Maddox
Defendant ID No. 0802028998 (R-1)

Dear Mr. Maddox:

On May 4, 2010, you filed your first Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61").

Since the claims you raised are procedurally barred, it must be dismissed.

Following a jury trial in August 2008, you were convicted of attempted robbery in the first degree and attempted theft. On the theft charge you received a sentence of one (1) year. On the attempted robbery charge you received a sentence of twenty-five (25) years with credit for 245 days. The balance was suspended after ten (10) years for ten (10) years of Level 3 probation.

On direct appeal, your conviction was affirmed. *Maddox v. State*, 2009 WL 2323490 (Del. July 30, 2009), 977 A.2d 898 (Del. 2009) (TABLE).

In your Motion for Postconviction Relief, you raise three (3) grounds.

In Ground One, you allege that the trial court committed error in mechanically applying the rules of evidence to deny you the right to present exculpatory evidence to the jury.

At trial, there was evidence that you attempted to commit a robbery at a retail establishment. Following your arrest, you provided a Mirandized statement to police that you were present at the retail establishment but that you did not rob it. The State introduced the portion of your statement which placed you at the scene of the crime. The defense wished the exculpatory portion to also be placed before the jury without the necessity of your testifying. That application was denied.

On appeal, the Supreme Court stated “The exculpatory portion of Maddox’s statement did not fall within any exception to the hearsay rule” citing *Smith v. State*, 669 A.2d 1 (Del. 1995). This specific issue has been previously adjudicated, and there is no reason to reconsider it in the interest of justice. This claim is procedurally barred.

In Ground Two, you allege that the indictment as to the attempted robbery was defective because the allegation of attempted robbery did not set forth the word “displayed” as to the use of a deadly weapon during the commission of the attempted robbery. You are correct in that the indictment did not contain the word “displayed”. The indictment contained the following language: “when attempting to commit theft he threatened the use of immediate force upon Mohamhad Yousaf what appeared to be a deadly weapon, a handgun, in violation of Title 11, §531(2) of the Delaware Code”. Also included in the indictment was the Section 11 *Del. C.* §832(a)(2) concerning robbery in the first degree.

The claim that the indictment was fatally defective by not including the term “displayed” was raised in the Supreme Court on direct appeal. The Supreme Court determined that the indictment sufficiently put you on notice of the charge and what you were called upon to defend. This matter has been previously adjudicated by the Supreme Court and is therefore procedurally barred. Rule 61(i)(4).

In Ground Three of the Rule 61 Motion, you allege that your trial attorney was ineffective for not raising objections concerning the issues raised in Grounds One and Two. Since any objections that may have been made would have been overruled or denied pursuant to the discussions in Grounds One and Two and the Supreme Court’s decision specifically on these issues, this claim is moot and must be dismissed.

Finally, the rulings in this case have been addressed by both this Court and the Supreme Court. There is no reason to revisit them “in the interest of justice”. Rule 61(i)(4).

For the reasons aforesated, the Defendant’s Motion for Postconviction Relief is denied.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

THG:baj

cc: Prothonotary
Department of Justice
Dean C. Johnson, Esquire