

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

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

May 28, 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 27, 2010, the Court denied your Motion for Postconviction Relief.

Also, on May 27, 2010, the Prothonotary received your Amendment to your Motion for Postconviction Relief. It adds Grounds Four and Five. I shall allow the amendment. Therefore, this decision should be considered as a supplement to the decision issued May 27, 2010.

In Ground Four, you allege the Court erred in the instructions to the jury as to the attempted robbery in the first degree.

This ground is procedurally barred under Superior Court Criminal Rule 61(i)(3) because this is a complaint about the jury instructions which could have been raised earlier and on direct appeal. You offer no reasons why this was not presented first to the trial court, nor more importantly, raised on appeal. Nor do you offer any prejudice. Therefore, Ground Four is procedurally barred.

Alternatively, I note that prejudice would be difficult to establish as the claim fails on its merits as well as having another procedural bar being applicable.

Your argument complains about the trial court instructing the jury concerning the “display” of a firearm. To the extent you complain the Court erred by including “displayed” in the instruction, this is procedurally barred by the Supreme Court’s decision in your direct appeal as discussed in the May 27, 2010 ruling.

The instructions as to the crimes of attempted robbery in the first degree are legally correct and therefore as to the merits, this claim fails.

In Ground Five, you complain that your trial counsel perfected your appeal and that another member of the Office of the Public Defender prosecuted the appeal. You complain that the Supreme Court Rules as to the handing off of the case from trial counsel to appellate counsel were violated in that there was not a proper substitution of counsel at the Supreme Court. I do not know if this is correct or not, but further investigation is unnecessary.

The Supreme Court is fully capable of monitoring its rules as to the attorneys appearing in that Court and this claim has nothing to do with your conviction. It is a frivolous claim, and it is dismissed.

Grounds Four and Five are denied and the Defendant's Motion for Postconviction Relief is denied, again.

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