

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

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

September 15, 2010

David M. Watson
SBI No. 0045
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: State v. David M. Watson
Defendant ID No. 0603017504 (R-4) and 0603014298 (R-4)

Dear Mr. Watson:

On September 7, 2010, the Court received your fourth Motion for Postconviction Relief. It is procedurally barred and must be dismissed.

In your present Motion, you allege ineffective assistance of counsel due to erroneous advice you received from your attorney concerning the minimum mandatory penalties for possession of a deadly weapon during the commission of a felony and as to robbery in the first degree. You pled guilty to these offenses.

You further allege that the Court committed an error during the plea colloquy because when the minimum mandatories were discussed, the Court failed to give you an opportunity to consult with your attorney after the discrepancy in the initial advice was brought to your attention by the Court.

In your first Motion for Postconviction Relief decided January 24, 2008, *State v. Watson*, 2008 WL 948329 (Del. Super.), you raised a claim of ineffective assistance of counsel concerning other alleged errors. You subsequently filed two (2) other Motions for Postconviction Relief that were both denied as procedurally barred.

This present Motion is denied as procedurally barred for the following reasons:

(a) Your Motion comes too late. On December 6, 2006, you pled guilty and were sentenced immediately to the recommended sentence. You did not appeal. Rule 61(i)(1) gives you an opportunity to attack a conviction within one (1) year. Obviously, you are too late.

(b) Your Motion is repetitive. You assert grounds for relief which you did not raise earlier, and consideration of these claims is not warranted in the interest of justice. See Superior Court Rule 61(i)(2).

(c) Likewise, the Motion is procedurally defaulted because you have not offered any explanation as to why you did not make these claims earlier, nor have you established any prejudice. See Superior Court Rule 61(i)(3).

Even if the Court analyzed the merits of these claims, they would fail. During the plea colloquy, a discussion concerning the potential sentence you faced took place and any misinformation you initially received was corrected on the record. Specifically, I asked you if the corrections changed your mind as to whether you wished to enter the plea. You told me "No sir". I also informed you that you could get up to sixty-three (63) years in jail, and you advised me that nobody had promised you what the sentence would be. You did not ask for an opportunity to discuss this matter further with your attorney.

You, in fact, got the sentence for which you negotiated: a total of six (6) years followed by probation for the robbery and the weapons offenses, as well as the remaining charges of two (2) counts of burglary in the third degree, theft of a firearm, and carrying a concealed dangerous weapon. Simply put, there is no merit in your claims of ineffective assistance of counsel and error by the Court.

In reviewing your file, I did note that the robbery sentence had a notation it was minimum mandatory as you were advised. That language has been removed as robbery is not one of the mandatory day-for-day sentences per this Court's determination. Enclosed is a copy of the corrected sentence order.

Defendant's Motion for Postconviction Relief is procedurally barred and dismissed.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

THG:baj
Enclosure
cc: Prothonotary
Department of Justice