

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

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

October 19, 2010

Edward J. Venne
SBI No. 0048
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

**RE: State v. Edward J. Venne
Defendant ID No. 0606002060(R-1)**

Dear Mr. Venne:

This is the Court's decision denying your Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61").

Your Motion was filed on September 14, 2010. Based on your allegations, I requested from the State a copy of the Child Advocacy Center DVD of the victim. The Court did not have a copy because you pled guilty, i.e., there was no trial.

The State provided the DVD which I viewed. Then, on September 28, 2010, I gave both you and the State until October 11, 2010, to comment on my observation that in the DVD the victim referred to the person who did this as "Daddy Ed". As of the date of this letter, I have received nothing; and, therefore, the Motion is ripe for a decision.

BACKGROUND

On September 11, 2006, you were indicted on two counts of rape in the first degree, one count of rape in the second degree, and one count of unlawful sexual contact.

Your trial was scheduled for February 13, 2007, with a final case review on February 7, 2007. You requested that the final case review be moved until Friday, February 9, 2007, to allow you more time to consider the plea negotiations.

On February 9, 2007, you entered a no contest plea to rape in the third degree as a lesser included offense of Count 1. The Court found the negotiated sentence recommendation to be reasonable and imposed same. You were sentenced to 25 years Level 5 with credit for the specific time you had served, suspended after 2 years and the completion of the Family Problems Program at the DOC, for Level 4 Home Confinement and a lengthy period of Level 3 probation. There was no appeal.

In August of 2008 your Motion for Modification was denied.

In this case, the victim was your child with a date of birth of October 5, 1999. The crimes were committed over a time period of October 2004 through February 2006.

In February 2009 the Court received a request from the child's mother asking that the "no contact" order as to her be modified so she could have contact with you. You were incarcerated at that time. This was granted.

On April 16, 2009, the victim's mother wrote to the Court advising that if her daughter was molested, she (the mother) did not think you, her father, would have been the one who did it. She asked me to drop the charges against you.

On July 1, 2010, you wrote the Court enclosing an April 1, 2010, letter from the victim's mother to you. In a nutshell, the victim's mother and you reported the child was recanting.

On September 14, 2010, the present Rule 61 Motion was filed, noting there was newly discovered evidence that the child reported abuse by "daddy". You argue that everyone knows the child never referred to you as "daddy" but always as "Daddy Eddie". You argue the State mistakenly assumed the child meant you, the child's father, when she said she was abused by "daddy".

Based on the allegations, the DVD of the child was reviewed, and she clearly identifies the person who molested her as "Daddy Ed".

Under Superior Court Criminal Rule 33 ("Rule 33"), a motion for a new trial based on newly discovered evidence must be filed within two (2) years after final judgment. It has been over three (3) years since you resolved the allegations with a guilty plea to rape in the third degree.

Pursuant to Rule 61, the procedural bar requirement of filing a Motion for Postconviction Relief within one (1) year of a final judgment [Rule 61(i)(1)] may be waived if there is a colorable claim of a miscarriage of justice. You have not established a miscarriage of justice.

It is obvious the mother of the victim and you, the father of the victim, have a "relationship" as is evidenced by her request to have contact with and to visit you at James T. Vaughn Correctional Center.

The basis of your Motion is that your daughter did not name you but someone else when she said “daddy” did it. You are wrong because she stated it was “Daddy Ed”.

Therefore, I do not find that there is a basis to waive the procedural bars arising from the time limitations in Rule 33 and/or Rule 61 in the interest of justice.

As to the merits, you are factually wrong and your Motion has no merit. The DVD is being placed in the Court’s Evidence Locker as “Court Exhibit 1”.

Your Motion for Postconviction Relief is denied.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

THG:baj

cc: Prothonotary
Adam D. Gelof, Esquire