IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR THE NEW CASTLE COUNTY

STATE OF DELAWARE	)	CR. A. NOS.: IN03-10-1154-R2
	)	
v.	)	
	)	DEF. I.D.: 0309015988
RALPH HAWKINS,	)	
	)	
Defendant.	)	

Date Submitted: July 21, 2010
Date Decided: October 21, 2010

Upon Consideration of
Defendant's Second Pro Se Motion for Postconviction Relief
DENIED.

O R D E R

This 21st day of October, 2010, upon consideration of the Motion for Post-conviction Relief brought by Defendant, Ralph H. Hawkins ("Defendant"), it appears to the Court that:

1. On September 21, 2003, Defendant was indicted on two counts of Murder First Degree, and one count each of Burglary First Degree, Arson First Degree, Assault Second Degree, Possession of a Deadly Weapon During the Commission of a Felony, and Reckless Endangering First Degree. Shortly thereafter,

the State timely indicated its intent to seek the death penalty against Defendant on the Murder First Degree charges. On February 15, 2005, Defendant plead guilty to Murder First Degree and the State withdrew its request for capital punishment. Defendant was sentenced to a mandatory term of life in prison on April 8, 2005. Defendant did not seek to withdraw his plea at any time prior to or after sentencing.

2. Defendant filed his first *pro se* motion for postconviction relief on November 13, 2007, in which he raised four issues relating to ineffective assistance of counsel. That motion was denied.[1] The Supreme Court of Delaware affirmed the denial of the motion by Order dated March 5, 2009.[2]

3. Defendant filed this *pro se* motion for postconviction relief on July 21, 2010. As best as the Court can discern from the motion, Defendant raises three grounds for relief: (1) that he did not knowingly, voluntarily, and intelligently accept the plea bargain offered by the State; and (2) that the indictment was fatally flawed and is retroactively invalid; and (3) that the trial court abused its discretion by

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[1] *State v. Hawkins*, 2008 WL 48446 (Del. Super. Feb. 2008).

[2] *Hawkins v. State,* 968 A.2d 491 (Del. 2009).

allowing the testimony of Dr. S. Mechanick.[3]

A. Standard of Review and Procedural Bars

4. Before addressing the merits of any postconviction relief motion, the Court must first determine whether the claims pass through the procedural filters of Superior Court Criminal Rule 61 ("Rule 61"). To protect the integrity of the procedural rules, the Court will not address the substantive aspects of the claims if Defendant's claims are procedurally barred.[4] Rule 61 imposes four procedural imperatives upon a defendant when bringing a Rule 61 motion: (1) the motion must be filed within one year of a final order of conviction; (2) any basis for relief must have been asserted previously in any prior postconviction proceedings unless warranted in the interest of justice; (3) any basis for relief not asserted in the proceedings below as required by the court rules is subsequently barred unless defendant can show cause and prejudice; and (4) any ground for relief must not have been formerly adjudicated in any proceeding unless warranted in the interest of

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[3]The Defendant's contention that the Court erred in this regard finds no support in the record. There is nothing in the docket to indicate that Dr. Mechanick was ever called to testify before the Court and the Defendant has not presented any evidence to the contrary.

[4] *Younger v. State*, 580 A.2d 552, 554 (Del. 1990)("It is well-settled that the Superior Court and this Court must address the procedural requirements of Rule 61 before considering the merits of this motion.").

justice.[5] Under Rule 61(i)(5), a defendant may avoid the first three procedural imperatives if the claim is jurisdictional or is "a colorable claim that there was a miscarriage of justice because of a constitutional violation."[6]

5. A judgment of conviction is final for the purposes of postconviction review under the following circumstances:

> (1) if the defendant does not file a direct appeal, 30 days after the Superior Court imposes sentence; (2) if the defendant files a direct appeal or there is an automatic statutory review of a death penalty, when the Supreme Court issues a mandate or order finally determining the case on direct review; or (3) if the defendant files a petition for certiorari seeking review of the Supreme Court's mandate or order, when the U.S. Supreme Court issues a mandate or order finally disposing of the case on direct review.[7]

6. Under the first procedural bar, Rule 61(i)(1), Defendant's motion is not timely because he did not file it within one year after his conviction became final. Defendant was sentenced on April 8, 2005, did not file a direct appeal, and did not file this motion for postconviction relief until July, 21, 2010, more than five years after sentencing. This procedural bar is avoided here, however, as to Defendant's claim that he did not knowingly and voluntarily enter his plea because that claim arguably constitutes "a colorable claim that there was a miscarriage of justice because

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[5] SUPER. CT. CRIM. R. 61(i).

[6] SUPER. CT. CRIM. R. 61(i)(5).

[7] SUPER. CT. CRIM. R. 61(m)

of a constitutional violation,"in accordance with Rule 61(i)(5).[8] Defendant's other two claims do not fit within the "miscarriage of justice" exception.[9]

7. Under the second procedural bar, Rule 61 (i)(2), Defendant's claims that (1) the indictment is fatally flawed and retroactively invalid; and (2) that the Court erred in its discretion by allowing the testimony of Dr. Mechanick, are barred because Defendant did not raise these grounds for relief in his prior postconviction motion filed on November 13, 2007. The Court can only consider these claims, therefore, if "warranted in the interest of justice."[10]

8. Given the new law raised by the Defendant, the Court will address his contention that the indictment is fatally flawed. Pursuant to Rule 61(i)(2), the Court will not, however, address the Defendant's contention that the Court abused its discretion by allowing the testimony of Dr. Mechanick. There is no evidence that doing so would serve the interest of justice. Indeed, the record reflects that Dr. Mechanick was never called to testify before the Court regarding any issue. The Court need not decide issues where "the claim for relief is unsupported by references

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[8] SUPER. CT. CRIM. R. 61(i)(5) *See State v. Casto*, 375 A.2d 444, 449-450 (1977) ("A guilty plea constitutes a waiver of important constitutional rights...")

[9] A flaw in an indictment does not rise to the level of a "a colorable claim that there was a miscarriage of justice because of a constitutional violation." *See State v. Toth,* 793 A.2d 417, 420 (Del. 2000).

[10] SUPER. CT. CRIM. R. 61(i)(2).

to the trial record."[11] In any event, the Defendant waived his right to challenge evidentiary rulings when he entered his plea of guilty.[12]

C. Defendant's Guilty Plea

9. Having determined that the Defendant's claim that he did not knowingly, voluntarily, and intelligently enter his plea of guilty is not procedurally barred, the Court now turns to the record to determine if it supports the claim, either as a matter of law of fact. It does neither.

10. Defendant alleges that he was not able to enter a valid plea of guilty because he was mentally incapable of doing so. In this regard, he points to the plea colloquy, asserting that "a five year old would have answered the questions presented by the judge in the same manner." Contrary to the Defendant's entreaty, what the record demonstrates is that he was more than capable of entering a knowing, intelligent and voluntary plea. Specifically, the record reflects that: (1) the Defendant graduated from high school; (2) he enjoys reading sports magazines and the newspaper; (3) he "is generally able to maintain his household in the sense of knowing when bills are due and being able to meet those obligations...;"[13] and (4) he

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[11] *State v. Gattis*, 1995 WL 790961, *16 (Del. Super.).

[12] *See Brown v. State*, 250 A.2d 503, 505 (Del. 1969); *State v. Davis*, 1994 WL 380655, at *3 (Del. Super).

[13] Hr'g Tr. 112, Sept. 16, 2004.

was experienced in the criminal justice system having been previously convicted in the State of Delaware of Rape in the Second Degree (by guilty plea), Assault in the First Degree (by guilty plea), Removing a Vehicle from the Scene of an Accident, Careless Driving, Leaving the Scene of an Accident Involving Property Damage, Failure to Report an Accident Involving Injury, Operating an Unregistered Motor Vehicle, and Driving Without a License. Two medical professionals, Dr. Kenneth J. Weiss, M.D. and Eliot L. Atkins, Ed.D., performed testing on the Defendant to determine whether he is seriously mentally retarded and both doctors determined that he is not.[14] Moreover, defense counsel's affidavit indicates that on February 3, 2005, counsel, along with Carmen Wright, Defendant's girlfriend, met with Defendant at the Howard R. Young Correctional Institute to discuss the plea offered by the State.[15] Counsel advised Defendant regarding the consequences of accepting such a plea. Defendant was then given an opportunity to discuss the issue with all present. At the conclusion of the meeting, Defendant elected to accept the plea offer extended by the State having satisfied his attorneys (who had been working with him for nearly two years) that he was mentally capable of doing so. Defendant has not presented any

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[14] Aff. In Resp. to Def. Mot. for Postconviction Relief pg. 4.

[15] *Id.* at 2.

evidence indicating that he was coerced into making this decision by his counsel or otherwise.

11. In addition to these background facts, the record reveals that on February 15, 2005, Defendant signed a Plea Agreement and a Truth-In-Sentencing Guilty Plea Form in which he affirmatively stated that he was knowingly, voluntarily and intelligently waiving his right to a jury trial, to cross examine witnesses, to present his own defense and to appeal his conviction. Defendant's attorneys represented to the Court that they "believe, with all that input (referring to family), [Defendant] is making a knowing, voluntary, and intelligent decision to enter a plea of guilty to the charge of first degree murder."[16] The Court then engaged Defendant in a lengthy plea colloquy to confirm that he understood the consequences of the plea and the constitutional trial rights he would forfeit by accepting the plea:

The Court: [] Now, based on the information I have, you completed the 12th grade in school; is that correct?

The Defendant: Yes, sir

The Court: [] And were you able, then, to read all of the information on the plea agreement that you signed?

The Defendant: Yes, sir.

The Court: And did you discuss this plea agreement thoroughly with your attorneys?

[16] Plea Tr. 4, Feb. 15, 2005.

The Defendant:	Yes, sir.

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The Court:	Did you confer with your attorneys about the questions that were on this form?
The Defendant:	Yes, sir.
The Court:	And were you satisfied with the advice that they gave you about these questions and what your answers should be?
The Defendant:	Yes, sir.

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The Court:	Do you understand [the] trial rights that you have as guaranteed by [the] constitution? Do you understand those rights?”[17]
The Defendant:	Yes, sir.
The Court:	And is it your intention to give up those constitutional rights by entering this plea of guilty?
The Defendant:	Yes, sir.

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The Court:	The charge of murder in the first degree carries with it a mandatory sentence, meaning that I don’t have any room to sentence you to anything other than what the law requires me to sentence you. And in this case, the law requires a

[17] The Court had previously reviewed each Constitutional trial right individually with Defendant to confirm that he understood each right.

sentence of life in prison without the benefit of probation or parole. Do you understand that?

The Defendant: Yes, sir.

The Court: That also means, that while you're serving that sentence, you would not be entitled to any credit for good time or early release. Do you understand that?

The Defendant: Yes, sir.

The Court: If the Court accepts your plea in this case, you will serve the balance of your life in prison. Do you understand that?

The Defendant: Yes, sir.

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The Court: Has anyone threatened or coerced you in any way to accept this plea of guilty?

The Defendant: No.

The Court: Are you doing so of your own free will because you believe it's the right thing for you to do?

The Defendant: Yes, sir.

The Court: And are you doing so because you are, in fact, guilty of the offense that you're entering this plea of guilty to this afternoon?

The Defendant: Yes, sir.

Given the Court's careful and detailed colloquy, and "absent clear and convincing evidence to the contrary, [Defendant] is bound by the answers he

provided under oath."[18] At the conclusion of the colloquy, based on the evidence in the record (including expert evaluations), the Defendant's responses to the questions on the Truth In Sentencing form, and his answers to the Court's questions, the Court concluded that he fully understood the benefits and consequences of his decision to plead guilty and that he knowingly, voluntarily, and intelligently waived his constitutional trial rights. Importantly, he has provided no evidence to the contrary. Accordingly, the Court remains satisfied that the Defendant entered a knowing, voluntary and intelligent plea.

B. The Indictment Is Not Fatally Flawed or Retroactively Invalid

12. Defendant next asserts that the indictment against him failed to charge an offense and that he was convicted of an act that no longer constitutes a crime pursuant to *Williams v. State*.[19]

13. While Defendant's argument is difficult to decipher, the Court believes that the Defendant is attempting to argue that the murder he plead guilty to was not committed in furtherance of the burglary he was charged with committing and,

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[18] *Barnett v. State*, 925 A.2d 503, 506 (Del. 2007).

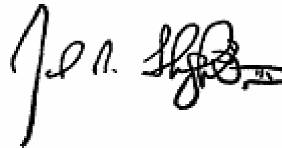
[19] *Williams v. State*, 818 A.2d 906 (Del. 2002)(Holding that "where a burglary is alleged to be the felony on which the felony murder charge is predicated, the death that occurs must not only be 'in the course of" the burglary but also must be 'in furtherance of" the burglary. That is, the burglary must have an independent objective that the murder facilitates. Accordingly, if the intent of the burglary was to commit murder, the death that occurred was not "in furtherance of" the burglary - it was the intent of the burglary).

therefore, pursuant to *Williams*, his conviction for murder first degree should be vacated.

14. Contrary to the Defendant's unsupported argument, the *Williams* case deals with the charge of felony murder.[20] The Defendant pled guilty to intentional first degree murder.[21] In regards to that charge, whether the murder occurred in furtherance of the burglary or not is irrelevant.[22]

15. Based upon the foregoing, Defendant's motion for postconviction relief is **DENIED.**

IT IS SO ORDERED.



Judge Joseph R. Slights, III

Original to Prothonotary

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[20] *Id.*

[21] Plea Tr. 5-6, Feb. 15, 2005.

[22] 11 *Del. C.* § 636.