

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID No. 80001076DI
)	
JAPHIS LAMPKINS,)	
)	
Defendant.)	
)	

Submitted: October 22, 2010
Decided: December 22, 2010

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE SUMMARILY DISMISSED.**

Richard Andrews, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Japhis Lampkins, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se*.

PARKER, Commissioner

This 22nd day of December 2010, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. In 1981, following a jury trial, Defendant Japhis Lampkins, Sr. was tried and convicted of first degree murder and related offenses. Lampkins was sentenced to life imprisonment without the possibility of probation or parole on the first degree murder conviction and to an additional fifteen years of imprisonment on the burglary, conspiracy and weapons offenses. On direct appeal, in 1983, Lampkins' convictions were affirmed.¹

2. After the Delaware Supreme Court affirmed Lampkins' convictions, he applied for federal habeas corpus relief. Those applications were denied.²

3. Thereafter, Lampkins filed a Rule 61 motion for postconviction relief. The motion was denied by the Superior Court on August 31, 1988³, and the denial of the motion was affirmed by the Delaware Supreme Court on November 14, 1988.⁴

4. The evidence presented at trial established the following facts.⁵ The victim, Mary Dugan, lived with her son in an apartment in Wilmington. Returning from shopping on the afternoon of April 2, 1980, Mary Dugan was killed shortly after entering her apartment. A neighbor in the apartment building heard a woman moaning before 3 p.m. A short time later, the neighbor heard the front door of the building slam shut. She went to the window and saw a man run out from the building's front door and run toward Rodney Street; the description she gave of the man's clothing was consistent with a description of clothing worn by Lampkins earlier that day. Police arrived at the building

¹ *Lampkins v. State*, 465 A.2d 785 (Del. 1983).

² *Lampkins v. State*, 1988 WL 137209 (Del. 1988), citing, *Lampkins v. Redman*, Civ. Act. No. 85-625 JJF (D. Del. June 30, 1986), vacated, No. 86-5469 (3d. Cir. Dec. 31, 1986), on remand, No. 85-625-JJF (D. Del. April 10, 1987), certif. prob. cause denied after remand, No. 87-3289 (3d. Cir. Aug. 13, 1987).

³ *State v. Lampkins*, 1988 WL 97879 (Del. Super. 1988).

⁴ *Lampkins v. State*, 1988 WL 137209 (Del. 1988).

⁵ See, *Lampkins v. State*, 465 A.2d 785, 786-87 (Del. 1983); *Brookins v. Phelps*, 2010 WL 3909326 (D. Del. 2010).

at 3:13 p.m., and discovered Mary Dugan's body in the living room. She had been beaten on the head, repeatedly stabbed, and strangled.⁶ The Medical Examiner concluded that, based on the number, nature and location of her wounds, the victim had been attacked by more than one person.⁷

5. In July 1980, Lampkins and his co-defendant Tyrone Brookins were indicted and charged with first degree murder and related offenses. Thomas Butler, a co-conspirator, testified against Lampkins and Brookins in exchange for pleading guilty to manslaughter and second degree conspiracy. Butler testified that on the morning of April 2, 1980, he and Lampkins committed an armed robbery in Newark, separating on their return to Wilmington. During the afternoon, Butler saw Lampkins again, who was now accompanied by Brookins. The three of them then ingested various drugs. Knowing that Lampkins and Butler had successfully robbed someone earlier that day, Brookins was anxious to do so as well. The three decided to go to the nearby supermarket. There they saw the victim leaving the store and followed her to her apartment. Butler waited outside while Brookins and Lampkins went into the building. Butler fled a few moments later after hearing Lampkins' voice, scuffling and a woman moaning.⁸

6. At trial, a police detective testified that, on April 10, 1980, he spoke with Lampkins' brother, Acey Lampkins, at the latter's request. Acey told the police detective that he had been told by both Butler and his brother, Japhis Lampkins, that they followed a woman from a supermarket to her home and stabbed the woman in her face when she opened her door. Acey later recanted his statement, both to the police and at trial. He conceded at trial, however, that his initial statement was wholly voluntary. He further

⁶ *Id.*

⁷ *Lampkins v. State*, 465 A.2d at 786.

⁸ *Id.*

testified that, prior to his recantation, he thought about the possibility of his brother receiving the death penalty if convicted.⁹

7. Timothy Wright, Japhis Lampkins' nephew, testified that he had given statements to the police regarding his knowledge of Lampkins' involvement in the murder but at trial he recanted his statements.¹⁰

8. A neighbor living above the victim's apartment testified that, just before the police arrived, she heard the apartment building's front door slam and saw a man running from the building dressed in a white hat, blue denim pants, and blue denim jacket. A witness who had seen Lampkins and Brookins at the scene of the morning robbery testified that one of the robbers, who matched Lampkins' description, was dressed almost entirely in dark blue and, at one point, put on a white hat.¹¹

9. At trial, Lampkin testified in his own defense. He admitted committing the morning robbery with Butler, but said that at the time of the killing he was across town cleaning his car. When the prosecutor pointed out to him that the car he claimed to have been cleaning was a rental car he had rented only a day or two earlier, Lampkins testified that sticky "cherry things" had dropped on the car the night before and he was concerned with liability for damage to the finish. When the prosecutor asked Lampkins what type of tree would be dropping anything at the beginning of April, he responded it was "an evergreen." An expert called by the State testified that there were no trees or plants growing in New Castle County in general, or on Lampkins' street in particular, which would have been producing a sticky substance in early April 1980.¹²

⁹ *Id.* at 786-788.

¹⁰ *Id.*

¹¹ *Id.* at 788-89.

¹² *Id.*

10. In addition, a detective testified that, while he was questioning Lampkins in connection with several robberies unrelated to the instant case and before any mention by the detective of the instant homicide, Lampkins told him that he had witnessed an assault which largely resembled the commission of the offense in this case.¹³ Lampkins later repeated the account in both a tape recording by police and in his own written statement.¹⁴

11. On October 5, 2010, Defendant filed a Rule 61 postconviction relief motion. In the subject motion, Defendant raises three claims. Defendant contends that: 1) he had a due process right to a jury instruction pursuant to both 11 Del. C. § 271 and 11 Del. C. § 274; 2) that he cannot be convicted based upon the inconsistent testimony of the two state witnesses; and 3) that his constitutional due process rights were violated by the trial testimony of the FBI expert relating to hair and footprint evidence.

12. Prior to addressing the substantive merits of any claim for postconviction relief, the Court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61.¹⁵ If a procedural bar exists, then the claim is barred, and the Court should not consider the merits of the postconviction claim.¹⁶ Moreover, if it plainly appears from the motion for postconviction relief that the movant is not entitled to relief, the Court may enter an order for its summary dismissal and cause the movant to be notified.¹⁷

¹³ *Id.* at 789-90.

¹⁴ *Id.*

¹⁵ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹⁶ *Id.*

¹⁷ Super.Ct.Crim.R. 61(d)(4).

13. Rule 61 (i) imposes four procedural imperatives: (1) the motion must be filed within three years of a final order of conviction;¹⁸ (2) any basis for relief must have been asserted previously in a prior postconviction proceeding; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules unless the movant shows prejudice to his rights or cause for relief; and (4) any basis for relief must not have been formally adjudicated in any proceeding. The bars to relief under (1), (2), and (3), however, do not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.¹⁹ Moreover, the procedural bars of (2) and (4) may be overcome if “reconsideration of the claim is warranted in the interest of justice.”²⁰

14. In this case, Defendant’s claims are all procedurally barred. Rule 61(i)(1) applies because Defendant filed this motion more than three years after his final order of conviction. Defendant’s final order of conviction was in 1983, and this motion filed on October 5, 2010, was filed over 27 years later, clearly outside the applicable three-year limit.

15. In addition to being time barred, to the extent that the claims presented herein have already been formally adjudicated, Rule 61(i)(4) precludes this Court’s reconsideration of the claims. It appears that all of the claims presented herein were already raised in some fashion and already addressed by the Delaware Supreme Court in

¹⁸ Since this final order of conviction occurred before July 1, 2005, the motion must be filed within three years. If the final order of conviction occurred on or after July 1, 2005, the motion must be filed within one year. See, Super.Ct.Crim.R. 61(i)(1)(July 1, 2005) (amending Super.Ct.Crim.R. 61(i)(1)(May 1, 1996)).

¹⁹ Super.Ct.Crim.R. 61(i)(5).

²⁰ Super.Ct.Crim.R. 61(i)(4).

Lampkins' direct appeal.²¹ It further appears that one or more of these claims were again raised and addressed by the Delaware Supreme Court as well as the federal court in subsequent post-conviction proceedings.²²

16. To the extent that Defendant has restated or refined his claims, the Superior Court is not required to re-examine any claim that has received "substantive resolution" at an earlier time simply because the claim is now refined or restated.²³

17. Moreover, Rules 61(i)(2) and (3) would prevent this Court from considering any additional arguments or claims not previously raised. Defendant filed a direct appeal and nothing prevented him from raising the claims asserted herein. Thereafter, in 1988, Defendant filed a Rule 61 motion for postconviction relief and also applied for federal habeas corpus relief. If Defendant genuinely believed the claims raised herein had any merit, he was required to raise those claims in prior post-conviction proceedings (to the extent that he did not). All three of Defendant's claims stem from alleged discrepancies and shortcomings at the trial, which took place in 1981. Defendant had time and opportunity to raise any fact, argument, claim or issue in his prior postconviction proceedings, and either did so, or neglected to do so. There was no reason why Defendant could not have raised the claims presented herein, to the extent that he did not, in his direct appeal or in a timely filed postconviction relief motion.

18. Defendant raises nothing new or recently discovered. Having already been provided with a full and fair opportunity to present any issues desired to be raised, any

²¹ *Lampkins v. State*, 465 A.2d 785, 793-795 (Del. 1983).

²² *Brookins v. State*, 922 A.2d 389, 393-94 (Del. 2007); *Brookins v. Phelps*, 2010 WL 3909326, at *6 (D.Del. 2010).

²³ *Johnson v. State*, 1992 WL 183069, *1 (Del.).

attempt at this late juncture to raise a new claim is barred. Accordingly, Defendant's motion should be dismissed because it is procedurally barred.

19. Defendant's motion should also be dismissed on the separate and independent basis that it lacks merit.

20. Defendant first claims that he was "tried strictly as an accomplice to his co-defendant Brookins, to whom all evidence pointed as the murderer" and therefore the court was required to give accomplice liability instructions pursuant to 11 Del. C. § 271 and 11 Del. C. § 274. Defendant relies upon *Allen v. State*²⁴ in support of his claim.

21. Despite Defendant's assertion to the contrary, he was not "tried strictly as an accomplice" and all the evidence did not point to just Brookins as the murderer. Defendant was indicted²⁵ and tried as an active participant in the murder of the victim and the related crimes. Indeed, at trial, the Medical Examiner testified that based on the number, nature and location of the victim's wounds, more than one assailant was involved in her killing.²⁶ The State's case was that both Japhis Lampkins and his co-defendant Tyrone Brookins acted together, as active participants, in the attack and murder of the victim.²⁷ On direct appeal, the Delaware Supreme Court after fully and thoroughly reviewing the evidence, concluded that there was substantial and competent evidence to establish that both Brookins and Lampkins acted together to murder the victim and to support Lampkins' convictions for first degree murder and the related offenses.²⁸

²⁴ *Allen v. State*, 970 A.2d 203 (Del. 2009).

²⁵ See for example, Count I of the Indictment- MURDER FIRST DEGREE. . . JAPHIS LAMPKINS, on or about the 2nd day of April, 1980, in the County of New Castle, State of Delaware, did intentionally cause the death of Mary E. Dugan by strangling her and repeatedly stabbing her in the face and chest.

²⁶ Trial Transcript of May 14, 1981, at pgs. 31-71.

²⁷ Trial Transcript of May 6, 7, 1981, at pgs. 18-43; Trial Transcript of May 26, 27 and 28, 1981, at pgs. 63-66

²⁸ See, *Lampkins v. State*, 465 A.2d 785, 789-795 (Del. 1983).

22. The *Allen* case, which involved a defendant charged solely as an accomplice, is inapplicable here.

23. The Delaware Supreme Court in Defendant's direct appeal already addressed and recognized that the cautionary jury instruction given in this case ensured that each defendant (Brookins and Lampkins) had their respective charges determined separately and individually. The Delaware Supreme Court recognized that the cautionary instruction required the State to establish beyond a reasonable doubt that each defendant, individually, committed the crimes for which he was charged.²⁹ The jury was cautioned that the fact that one of the defendant's may be found guilty of an offense charged should not in any way control the verdict with respect to the guilt or absence of guilt of the other accused.³⁰

24. It is further noted that all the charges against Lampkins- first degree murder, conspiracy first degree, possession of a deadly weapon during the commission of a felony, burglary second degree, and conspiracy second degree, all require intentional conduct. A Section 274 instruction would have been properly denied when the underlying offenses all require the same *mens rea*.³¹

25. For the sake of completeness, it is noted that to the extent *Allen* created any newly recognized retroactive right, a defendant was required to raise his entitlement to that new right within one year.³² The entitlement to raise any newly recognized retroactive right established by *Allen*, decided in February 2009, became time barred after February 2010. Defendant did not file the subject motion until October 2010, over 8 months later.

²⁹ *Lampkins*, 465 A.2d at 794.

³⁰ *Id.*

³¹ *Richardson v. State*, 3 A.3d 233, 237 (Del. 2010).

³² See, Super.Ct.Crim.R. 61(i)(1).

Having failed to timely raise a claim during the applicable one year period, any such claim even if it was meritorious (which it is not) is now time barred.

26. Yet the *Allen* case did not, in fact, create a newly recognized retroactive right. In *Richardson v. State*, 3 A.3d 233 (Del. 2010), the Delaware Supreme Court held that its decision in *Allen* did not articulate a new substantive right and, therefore, that its decision in *Allen* was not retroactively applicable.

27. Turning next to Defendant's second claim, Lampkins claims that he cannot be convicted based upon the inconsistent testimony of the two state witnesses. Defendant contends that "no rational juror could conclude beyond a reasonable doubt that Mr. Lampkins was involved [in the murder of the victim] or what, if any, role he played."³³ The Delaware Supreme Court disagreed. On direct appeal, the Delaware Supreme Court after fully and thoroughly reviewing the evidence concluded that there was substantial and competent evidence to establish that both Brookins and Lampkins acted together to murder the victim and to support Lampkins' convictions for first degree murder and the related offenses.³⁴

28. In fully and thoroughly reviewing the evidence against Lampkins, the Delaware Supreme Court considered the testimony of the eyewitness who observed a person fitting Lampkins' description running from the scene of the crime. The Delaware Supreme Court also considered Lampkins' own pre-trial statements as well as Lampkins alibi testimony at trial which was undercut by other witnesses. The evidence further included the testimony of Lampkins' brother and nephew, who both recanted their pre-trial statements at trial. The evidence also consisted of the testimony of co-defendant Thomas

³³ Defendant's Memorandum of Law in Support of his Rule 61 Motion, at pg. 10.

³⁴ See, *Lampkins v. State*, 465 A.2d 785, 789-795 (Del. 1983).

Butler, who recanted his trial testimony shortly after trial³⁵, while Lampkins direct appeal remained pending, and before Lampkins filed his first postconviction relief motion and his petitions for federal habeas relief.

29. The totality of the State’s case did not rest on the “inconsistent testimony of two state witnesses” but encompassed much more, as discussed above and set forth more fully in the Delaware Supreme Court’s opinion on Lampkins’ direct appeal.³⁶ There was substantial and competent evidence against Lampkins to support his convictions.³⁷

30. As previously discussed, Defendant was convicted in 1981, over 29 years ago, and his conviction was affirmed in 1983, over 27 years ago. Defendant’s subject Rule 61 motion does not allege any new or recently discovered factual developments that would warrant a consideration of this otherwise procedurally barred claim.

31. Defendant’s third claim is that his constitutional due process rights were violated by the admission of the trial testimony of the FBI expert relating to hair and footprint evidence. It is noted that the hair and footprint evidence of which Defendant complains was that of his co-defendant Brookins. Lampkins complains that he was prejudiced by the improper admission due to the “spillover effect” of the testimony.

32. The admission of the trial testimony of the FBI expert relating to hair and footprint evidence, of which Lampkins now complains, was already adjudicated by the Delaware Supreme Court.³⁸ Moreover, Lampkins already raised the issue that he would be implicated and prejudiced unfairly by the introduction of this physical evidence

³⁵ The Delaware Supreme Court recognized that the affidavits containing post-trial recantations were highly suspect when co-defendant Brookins presented post-trial recantations in support of his Rule 61 motion- See, *Brookins v. State*, 1999 WL 1090567 (Del. 1999). Here to, the recantations at trial and shortly thereafter of Lampkins family and friend (Butler) were similarly highly suspect. See also, *Blakenship v. State*, 447 A.2d 428, 433-34 (Del. 1982).

³⁶ *Lampkins v. State*, 465 A.2d 785 (Del. 1983).

³⁷ *Lampkins*, 465 A.2d at 794-795.

³⁸ See, *Brookins v. State*, 922 A.2d 389, 391-395 (Del. 2007)

against Brookins.³⁹ After thoroughly and fully considering the hair and footprint evidence admitted at trial, the Delaware Supreme Court held that the evidence was properly admitted.⁴⁰ The Delaware Supreme Court also already held that Lampkins was not unfairly prejudiced by the admission of this evidence against co-defendant Brookins.⁴¹ Lampkins does not allege anything new or recently discovered that would warrant a consideration of this otherwise procedurally barred claim.

33. Since Defendant's claims are procedurally barred, Defendant must meet one of the exceptions to overcome the bars to relief. In this case, Defendant has failed to overcome any of the procedural bars by showing a "colorable claim that there was a miscarriage of justice" or that "reconsideration of the claim is warranted in the interest of justice." The "miscarriage of justice" exception is a "narrow one and has been applied only in limited circumstances."⁴² The Defendant bears the burden of proving that he has been deprived of a "substantial constitutional right."⁴³ The Defendant has failed to provide any basis, and the record is devoid of, any evidence of manifest injustice. It is clear from Defendant's motion that Defendant's claims do not meet the high standard that the fundamental fairness exception requires. The Court does not find that the interests of justice require it to consider these otherwise procedurally barred claims for relief.

34. Defendant's request for appointment of counsel and for an evidentiary hearing is hereby denied. The Court will appoint counsel for an indigent movant only in the exercise of discretion and for good cause shown.⁴⁴ Prisoners have no constitutional right

³⁹ *Lampkins v. State*, 465 A.2d 785, 793-795 (Del. 1983).

⁴⁰ *Brookins v. State*, 922 A.2d 389, 393-94 (Del. 2007); *Brookins v. Phelps*, 2010 WL 3909326, at *6 (D.Del. 2010).

⁴¹ *Lampkins v. State*, 465 A.2d at 793-795.

⁴² *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

⁴³ *Id.*

⁴⁴ Super.Ct.Crim.R. 61(e).

to counsel beyond their direct appeal, and the appointment of an attorney at taxpayer expense occurs only in exceptional circumstances.⁴⁵ Having carefully considered the Defendant's motion and the evidentiary record, it does not appear that exceptional circumstances exist for the appointment of counsel nor does it appear that an evidentiary hearing will aid in the resolution of the issues presented herein.

35. Defendant's motion for postconviction relief is procedurally barred, without merit, and should be denied.

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied.

IT IS SO RECOMMENDED.

Commissioner Lynne M. Parker

oc: Prothonotary

⁴⁵ *State v. Johnson*, 2004 WL 3029940 (Del.Super.); *State v. Andrus*, 2006 WL 3492293 (Del.Super.).