

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

STATE OF DELAWARE)
)
 Plaintiff,)
)
 v.) I.D. 9801009579
)
)
TSCHAKA FORTT,)
)
 Defendant.)
)

ORDER

Submitted: April 26, 2011
Decided: July 20, 2011

This is Defendant's third motion for post conviction relief pursuant to Criminal Rule 61. Defendant was convicted in 1999 of two counts of robbery in the first degree and three counts of possession of a deadly weapon during the commission of a felony.

In this motion, Defendant contends that there was insufficient evidence to convict him of the robbery first degree counts because the evidence did not establish beyond a reasonable doubt that he possessed a weapon when he committed the robberies. This is simply a repackaging of an argument he unsuccessfully made to the Delaware Supreme Court

and, later, to this court in a post conviction relief proceeding. In his direct appeal, the Delaware Supreme Court held that the evidence was sufficient to find Defendant guilty of the counts of the indictment charging Defendant with possession of a firearm during the commission of a felony.¹ (The underlying felonies for the firearm counts were the robberies). *A fortiori*, the evidence was sufficient to convict Defendant of the counts alleging robbery in the first degree.

Superior Court Criminal Rule 61(i) (4) precludes this court from reconsidering a claim that was formerly adjudicated. Given that his sufficiency-of-the-evidence claim with respect to the firearm was formerly adjudicated, this court is barred from considering this claim. Defendant points to the “interest of justice” exception to the procedural bar in Rule 61(i) (4). To come within that exception, Defendant “must show that subsequent legal developments have revealed that the trial court lacked authority to convict or punish him.”² Although Defendant cites opinions published after his conviction, none come close to showing that this court lacked authority to punish him.

Defendant also argues that there was prosecutorial conduct during his trial and that his trial counsel was ineffective. Both of these are based upon the faulty premise that there was no evidence he possessed a weapon during the robberies. With respect to the prosecutorial misconduct claim, he asserts that it was misconduct for the prosecutor

¹ *Fortt v. State*, 767 A.2d 799, 802-3 (Del. 2001).

² *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990).

to charge him with robbery in the first degree because there was no evidence he possessed a weapon. With respect to the ineffective assistance of counsel claim, he asserts that his counsel was ineffective because he failed to challenge the sufficiency of the evidence. As with his argument discussed earlier, these arguments are simply a repackaging of an argument previously rejected in one of his appeals to the Supreme Court.

Defendant's Rule 61 motion is therefore **DISMISSED**.


John A. Parkins, Jr.

cc: Prothonotary
cc: Defendant
Department of Justice