

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

STATE OF DELAWARE

v.

GARY RILEY,

Defendant.

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ID#: 9705008339

Submitted: April 16, 2003
Decided: April 30, 2003

ORDER

Upon Defendant's Second Motion for Postconviction Relief-- *DISMISSED*

On May 29, 1998 a jury found Gary Riley guilty of trafficking in cocaine and related crimes. His conviction was affirmed by the Supreme Court and the mandate was filed on April 19, 2000. On May 29, 2001, Riley filed his first motion for postconviction relief. In that proceeding, he alleged ineffective assistance of counsel concerning his original attorney's failures to request a *Flowers* hearing¹ and to challenge the search warrant's staleness. By order dated June 27, 2001, the court dismissed

¹ *State v. Flowers*, 316 A.2d 564 (Del. Super. Ct. 1973).

Riley's first motion for postconviction relief. Riley appealed and the dismissal was affirmed by order of the Supreme Court dated January 7, 2002.

On April 14, 2003, Defendant filed this, his second motion for postconviction relief. Under Superior Court Criminal Rule 61(d)(1), the court has examined the motion and contents of the files relating to the judgment under attack. It plainly appears from the second motion for postconviction relief and the record of prior proceedings that movant is not entitled to relief and summary dismissal under Rule 61(d)(4) is appropriate.

It appears Riley filed his second motion for postconviction relief just before Rule 61(i)(1)'s three year time limitation was crossed. So, it is timely. Nevertheless, Riley's second motion for postconviction relief is barred under Rule 61(i)(2), (3) and (4). It is repetitive, procedurally defaulted and formerly adjudicated. Although Riley attempts to invoke Rule 61(i)(5), he fails to establish a colorable claim of injustice.

In the court's written decisions denying Riley's pretrial motion to suppress and his first motion for postconviction relief, the court has set out in detail the facts leading up to Riley's conviction.² In his second motion for postconviction relief, Riley mostly attempts to relitigate his motion to suppress the evidence seized by the police when they executed a search warrant. Similarly, Riley challenges the confidential

² *State v. Riley*, 2001 WL 1456840 (Del. Super. Ct.); *State v. Riley*, 1998 WL 437143 (Del. Super. Ct.).

informant. Finally, Riley re-alleges the ineffective assistance of the attorney who represented him during the suppression hearing, the attorney who represented him at trial, the attorney who conducted his direct appeal and the attorney who assisted Riley during his first motion for postconviction relief. According to Riley, all four attorneys were ineffective.

The court appreciates that Riley's latest effort is not a mirror image of the prior proceedings. Nevertheless, it is well-settled that defendants are entitled to one direct appeal and one motion for postconviction relief. During those proceedings, defendants are obligated to make all their claims. Defendants are not entitled to fragment their claims, addressing them to the courts in serial fashion.

In an unusual case, a defendant might raise an issue of Constitutional dimension or fundamental fairness requiring the courts' attention, even in the face of prior adverse decisions. Riley, however, presents nothing approaching that standard. The evidence presented by the State at trial established that Riley, in fact, was guilty. Even if there were merit to Riley's pretrial suppression motion, which there was not, suppression motions relate to the exclusionary rule. Thus, a problem concerning the search implicates the Constitution only indirectly. But again, the court emphasizes that the search was proper. And along the same lines, Riley's claim that his four lawyers were all ineffective does not form a basis for invoking Rule 61(i)(5). To the extent that Riley's attack on his latest attorney is a new claim, Riley does not even attempt to meet

Strickland v. Washington's standards.³ And besides, a post conviction relief proceeding can not be used to attack a previous post conviction relief proceeding.⁴ As Defendant had no right to counsel during his first post conviction relief proceeding, it cannot be said that he received ineffective assistance of counsel.⁵

For the foregoing reasons, Defendant's April 14, 2003 Motion for Postconviction Relief is summarily **DISMISSED**. The Prothonotary shall notify movant of this decision, consistent with Rule 61(4).

IT IS SO ORDERED.

Judge

oc: Prothonotary
pc: James A. Rambo, Deputy Attorney General
Jerome E. Capone, Esquire

³ 466 U.S. 668 (1984).

⁴ *Floyd v. State*, 670 A.2d 1337 (Del. 1995).

⁵ *Floyd v. State*, 612 A.2d 158 (Del. 1991), *citing Ross v. Moffitt*, 417 U.S. 600 (1974) and *Shipley v. State*, 570 A.2d 1159, 1166 (Del. 1990).