

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. Henley Graves
Resident Judge

SUSSEX COUNTY COURTHOUSE
THE CIRCLE
P.O. BOX 746
GEORGETOWN, DE 19947
(302) 856-5257

April 28, 2003

N440
Gary J. Johnson
Sussex Correctional Institution
P. O. Box 500
Georgetown, DE 19947

**RE: Defendant ID No. 9806008595(R2)
Criminal Action No. 98-06-0595**

Dear Mr. Johnson:

On April 23, 2003, the Court received your Motion for Postconviction Relief. This is your second Motion for Postconviction Relief.

In February 1999 you were found guilty of delivery of cocaine and due to your record sentenced to a period of 15 years incarceration followed by probation. The Supreme Court affirmed your conviction on direct appeal. Johnson v. State, Del. Supr., No. 164, 1999, Walsh, J. (Dec. 20, 1999). On January 7, 2000, the records from Supreme Court were returned along with the mandate affirming your conviction. One of the issues on appeal was the issue of your identification and the process used by the police in using police photographs to identify you.

On September 17, 2002, you filed your first Motion for Postconviction Relief. In that you alleged that your attorney was ineffective in that his failure to attack the sufficiency of the evidence led to your conviction, and you also alleged that he was ineffective for his failure to raise at trial and on appeal matters concerning the introduction of the police photograph used in your identification. In denying your Postconviction application, the Court noted that you were factually wrong. Your attorney did raise the issue concerning the police photograph and its use in your identification at trial, as well as on appeal. Your Motion for Postconviction Relief was denied. Johnson v. State, Del. Super., No. 9806008595(R1), Graves, J. (Oct. 8, 2002). That decision was affirmed by the Supreme Court. Johnson v. State, Del. Supr., No. 617, 2002, Walsh, J. (Mar. 6, 2003) (ORDER). As noted above, your second Motion for Postconviction Relief followed approximately six weeks later, being filed on April 23, 2003.

Your present application is procedurally barred for several reasons. Pursuant to Rule 61(i)(1), a Motion for Postconviction Relief should be filed within three (3) years of the return of the mandate from the Supreme Court, if it was a direct appeal. The return of the mandate was January 7, 2000. Your present application is time-barred.

Gary J. Johnson
Page 2
April 28, 2003

It is also barred because it is a repetitive motion and consideration of the claim is not warranted in the interest of justice because it is a repackaging of issues raised on trial and direct appeal. See Rule 61(i)(2).

It is also barred under Rule 61(i)(4) because of the repackaging of your complaint concerning the identification process, this matter having been formerly adjudicated at trial and on direct appeal. This former adjudication bars further review unless reconsideration is warranted in the interest of justice. I do not find that the claim which has been reviewed by this Court and the Supreme Court is in need of further review.

For the reasons above, your second Motion for Postconviction Relief is denied.

SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary