

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

January 9, 2003

N440
Thomas R. Miller
Delaware Correctional Center
Smyrna Landing Road
Smyrna, DE 19977

**RE: Defendant ID No. 92S05488DI
Criminal Action No. 92-12-0044 and 0045 (R-2)**

Dear Mr. Miller:

Your Motion for Postconviction Relief was docketed on January 2, 2003. Included in your paperwork were a Motion for a Change in Venue, a Motion for Appointment of Counsel, a "Motion for Expansive Pages on a Rule 61 Memorandum of Law", and also you sought that I recuse myself from handling your case. I have reviewed what you have submitted and find that the present application is procedurally barred under Superior Court Criminal Rule 61(i).

GROUND S RAISED IN THE PRESENT PETITION

Claim No. I:

DNA Analysis would have exonerated Defendant and proven his innocence.

Claim No. II:

The Court's decision to permit the Defendant's plea withdrawal eight months after initially accepting it supports there was insufficient evidence to convict the Defendant.

Claim No. III:

The State's decision to proceed to trial after the Defendant withdrew his plea and after the victim had passed away is evidence of a vindictive prosecution in violation of the Defendant's Sixth and Fourteenth Amendment rights to due process.

Claim No. IV:

The Court and the State had insufficient evidence and lacked jurisdiction to try and convict the Defendant and that there was a tainted jury selection violating his equal protection rights of the 19th Amendment to a fair cross-section in the jury selection process.

Claim No. V:

The State and the Court lacked authority and jurisdiction over the Defendant because of a defective waiver of indictment.

Claim No. VI:

The State's opening argument misled the jury.

Claim No. VII:

Prosecution witnesses perjured themselves under oath which resulted in a miscarriage of justice.

BACKGROUND

On May 26, 1994, you were sentenced to a period of life imprisonment for unlawful sexual intercourse and burglary in the 2nd degree. You appealed and the conviction was affirmed. Thomas Miller v. State, Del. Supr., No. 236, 1994, Hartnett, J. (May 9, 1995) (ORDER). The history of your case is summarized in the Supreme Court's Order. Subsequently, you filed a Motion for Postconviction Relief, raising sixteen (16) separate grounds. Following an evidentiary hearing, this Court denied your Application for Postconviction Relief. Miller v. State, Del. Super., Cr. A. Nos. 92-12-0044, 92-12-0045, Graves, J. (Oct. 11, 1995). Your subsequent appeal to the Delaware Supreme Court was dismissed as being untimely.

Subsequently, you pursued Postconviction Relief by way of a Writ of Habeas Corpus application in the United States District Court for the District of Delaware. In that application were many of the issues raised in the initial Rule 61 application, as well as issues raised in the present application. District Judge Sleet found that your arguments failed on the merits or were procedurally barred, and dismissed your Petition. Miller v. Snyder, D. Del., C. A. No. 96-187-GMS, 2001 WL 173796, Sleet, J. (Feb. 14, 2001).

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PROCEDURAL BARS

All of the present claims are procedurally barred under Rule 61(i)(1). Your conviction became final in May of 1995 when affirmed by the Delaware Supreme Court. Over seven (7) years have expired since that conviction became final. There is no good reason for this Court to revisit your case because of the claim of lack of jurisdiction, or a colorable claim that there was a miscarriage of justice due to a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to your conviction.

Your present application is also denied under Rule 61(i)(2) in that it is a repetitive motion. To the extent there are claims in the present application which have not been asserted heretofore, they are barred unless consideration of the claim is warranted in the interest of justice. I do not find that the claims are warranted in the interest of justice. In making this determination, I will speak to Claim No. I, in which you allege DNA analysis would have exonerated you and proven your innocence. This is not an innocence project issue. There was a DNA analysis which was inconclusive, but you were caught in the victim's apartment, lying on top of the victim. No one should be misled by the allegations that somehow the DNA analysis could have proven your innocence.

Finally, you re-plow much of the ground that has been ruled upon by the Supreme Court, this Court, and the District Court. Those portions of your petition which repeat the same claims are barred under Rule 61(i)(4) as they have been formerly adjudicated. Reconsideration of the claims is not warranted under the interest of justice.

Defendant's Application for Rule 61 Relief is denied.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary
Department of Justice