

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

1 The Circle, Suite 2  
GEORGETOWN, DE 19947

November 24, 2014

STATE MAIL – N440  
Lamaris Wescott  
SBI # 54  
James T. Vaughn Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

***RE: State of Delaware v. Lamaris Wescott***  
**Def. ID # 08022606**

Dear Mr. Wescott:

This is my decision on your motion for postconviction relief. You were convicted by a jury of Possession of a Deadly Weapon by a Person Prohibited. The conviction arose out of your actions at a large outdoor party where you shot and injured another partygoer. The Supreme Court affirmed your conviction in a decision dated October 13, 2009.<sup>1</sup>

You argue that the State failed to prove every element of Possession of a Deadly Weapon by a Person Prohibited beyond a reasonable doubt. Essentially, and by your own words, you are seeking to challenge the evidence again that produced

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<sup>1</sup> 981 A.2d 1173, 2009 WL 3282707 (Del. Oct. 13, 2009).

the verdict in this case. The time to challenge the evidence in this case has passed.

Your motion for postconviction relief is barred by Superior Court Criminal Rule 61(i)(1). This rule provides that a “motion for postconviction relief may not be filed more than one year after the judgment of conviction is final...”<sup>2</sup> As stated previously, the Supreme Court affirmed your conviction on October 13, 2009. Therefore, your deadline for filing a postconviction relief motion was October 13, 2010. Your motion for postconviction relief was filed on November 10, 2014, or over four years after the cut-off date. Therefore, your motion for postconviction relief is barred by Rule 61(i)(1).

The bar to relief under Rule 61(i)(1) does not apply to a claim that the “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, or fairness of the proceedings leading to the judgment of conviction.”<sup>3</sup> The “miscarriage of justice” or “fundamental fairness” exception is a narrow one and has been applied only in limited circumstances, such as when the right relied upon has been recognized for the first time after a direct appeal.<sup>4</sup> This exception may also

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<sup>2</sup> Superior Court Criminal Rule 61(i)(1).

<sup>3</sup> Superior Court Criminal Rule 61(i)(5).

<sup>4</sup> *Younger v. State*, 580 A.2d 552, 555 (Del. 1990), citing *Teague v. Lane*, 489 U.S. 288, 297-299 (1989).

apply to a claim that there has been a mistaken waiver of fundamental constitutional rights.<sup>5</sup>

You have not raised a colorable claim that requires consideration under this exception. You were provided with an opportunity to challenge the evidence in this case at your trial and in your appeal to the Supreme Court. You do not get a second opportunity to challenge the evidence since your first one failed.

Your motion is also barred by Superior Court Criminal Rule 61(i)(3). Rule 61(i)(3) provides that any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is barred. In order to overcome the procedural default of Rule 61(i)(3), you must show (1) cause for relief from the procedural default, and (2) prejudice from the violation of your rights. A showing of cause is not satisfied by showing merely that a claim was not raised. You must show that “some external impediment” prevented you from raising the claim.<sup>6</sup> To demonstrate ‘prejudice’ you must show that a “substantial likelihood” exists that if the issue had been raised on appeal, the outcome would have been different.<sup>7</sup> In order to avoid procedural default under Rule 61(i)(3), you must demonstrate both “cause” and

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<sup>5</sup> *Webster v. State*, 604 A.2d 1364, 1366 (Del. 1992).

<sup>6</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

<sup>7</sup> *Flamer v. State*, 585 A.2d 736, 748 (Del. 1990).

“actual prejudice.”<sup>8</sup> You have not shown “cause” for why you did not previously raise your allegation that the State failed to prove each element of Possession of a Deadly Weapon by a Person Prohibited in your direct appeal to the Delaware Supreme Court. Therefore, you cannot overcome the procedural bar of Rule 61(i)(3). Your motion for postconviction relief is denied.

**IT IS SO ORDERED.**

Very truly yours,

*/s/ E. Scott Bradley*

E. Scott Bradley

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cc: Prothonotary  
Counsel

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<sup>8</sup> *Blackwell v. State*, 736 A.2d 971 (Del. 1999).