

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

| | | |
|-------------------|---|---------------------|
| STATE OF DELAWARE |) | |
| |) | |
| v. |) | I.D. No. 9804001318 |
| |) | |
| LEROY SHELLEY aka |) | |
| TYRAN DAVIS |) | |
| |) | |
| Defendant. |) | |

Submitted: September 5, 2014

Decided: October 27, 2014

Upon Defendant's Third Motion for Post-conviction Relief.

SUMMARILY DISMISSED.

ORDER

LeRoy Shelley aka Tyran Davis, *pro se*, 175 Progress Drive, Waynesburg, PA 15370.

Brian J. Robertson, Esquire, Department of Justice, 820 N. French St.,
Wilmington, Delaware, Attorney for the State.

WHARTON, J.

This 27th day of October, 2014, upon consideration of Defendant's third Motion for Post-conviction Relief and the State's Response in opposition, it appears to the Court that:

1. Defendant, LeRoy Shelley aka Tyran Davis, filed his third Motion for Post-conviction Relief on July 7, 2014, alleging a violation of due process of law. Specifically, Defendant alleges that the Court lacked jurisdiction because the statute of limitations had expired and because the "indictment was not signed by a grand jury foreperson when re-indictment was alleged to have occurred [sic] and the original was never dismissed."¹ Defendant claims that because the court lacked jurisdiction, he is eligible for an exception to the procedural bars set forth in Delaware Superior Court Rule of Criminal Procedure 61.
2. The State opposes Defendant's Motion for Post-conviction Relief because it is "repetitive, untimely and lacking in any substance that would explain why the prior state and federal decisions in this matter should be revisited."² Specifically, the State argues that Defendant's arguments are substantially similar to those raised in Defendant's second Motion for Post-conviction Relief which were rejected by the Court.

¹ Def. Mot., D.I. 42, pg. 2.

² State Resp., D.I. 45, pg. 2.

3. In 2007, following a jury trial, Defendant was found guilty of two counts of First Degree Robbery, two counts of Second Degree Kidnapping, Second Degree Conspiracy and two counts of Possession of a Firearm During the Commission of a Felony for an incident that took place in 1997. Defendant was sentenced on March 6, 2008 and did not file a direct appeal. Instead, Defendant filed his first Rule 61 Motion in March 2009. Defendant's Motion claimed that a State witness offered false testimony regarding Defendant's confession.³ The Motion was rejected because the Court determined that claim could have been raised to the Delaware Supreme Court on direct appeal and the Motion was untimely filed.⁴ Defendant appealed the decision to the Delaware Supreme Court which dismissed the appeal as untimely.⁵
4. In September 2010, Defendant filed an application for a writ of *habeus corpus*. The United States District Court for the District of Delaware denied the application as untimely.⁶
5. In March 2012, Defendant filed a Motion to Vacate Sentence, Judgement [sic], which the Court treated as a second Motion for Post-conviction Relief. In the Motion, Defendant argued that his re-

³ Def. Mot., D.I. 21, pg. 2.

⁴ Letter Op., D.I. 28, pg. 1.

⁵ *Shelley v. State*, 2010 WL 1627335, at *1 (Del. Apr. 21, 2010).

⁶ *Shelley v. Delaware*, 2012 WL 379907, at *5 (D. Del. 2012).

indictment was defective because it was not signed by the grand jury and, for that reason, the Court lacked jurisdiction to hear the matter.⁷ The Court denied the Motion on June 14, 2012 because the motion was procedurally barred and the Defendant had made no attempt to overcome the procedural hurdle.⁸ The Delaware Supreme Court affirmed that decision.⁹

6. On June 4, 2014, the current version of Delaware Superior Court Rule of Criminal Procedure 61 became effective and provided the Court a specific provision to preliminarily evaluate the validity of claims set forth in second or subsequent post-conviction motions.¹⁰ Specifically, the amended rule permits summary dismissal of motions that fail to meet the following requirements:

a second or subsequent motion under this rule shall be summarily dismissed, unless the movant was convicted after a trial and the motion either:

- (i) pleads with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted; or
- (ii) pleads with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware

⁷ Def. Mot. for Post Collateral Relief, D.I. 35, pg. 2.

⁸ Letter Op., D.I. 36, pg. 1.

⁹ *Shelley v. State*, 53 A.3d 303 (Del. 2012).

¹⁰ See Super. Ct. Crim. R. 61(d)(2).

Supreme Court, applies to the movant's case and renders the conviction or death sentence invalid.¹¹

Additionally, if a second or subsequent claim survives summary dismissal, the Court must apply the various procedural bars set forth in Super. Ct. Crim. R. 61(i)¹² before evaluating the merits of Defendant's claim.

7. Defendant's claim that the Court lacks jurisdiction to hear the matter because the statute of limitations had run and because the re-indictment was not signed by the grand jury foreperson does not meet the requirements set forth in Super. Ct. Crim. R. 61(d)(2) and, as such, the Court summarily dismisses Defendant's third Motion for Post-Conviction Relief.

Therefore, Defendant's third Motion for Post-conviction Relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

/s/Ferris W. Wharton, J.

oc: Prothonotary
cc: Investigative Services
Brian J. Robertson, Esquire
LeRoy Shelley aka Tyran Davis, SBI # 00603729.

¹¹ Super. Ct. Crim. R. 61(d)(2).

¹² Super. Ct. Crim. R. 61(i) provides the following bars to relief: one year time limitation; successive motions; procedural default; and former adjudication.