

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

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 9811012362
	)	
WILLIAM GREGORY	)	
	)	
Defendant.	)	

Submitted: April 28, 2014
Decided: July 29, 2014

Upon Defendant's Third Motion for Postconviction Relief – DENIED

ORDER

Jamie McCloskey, Esquire, Department of Justice, 820 N. French Street,
Wilmington, DE 19801.

William Gregory, James T. Vaughn Correctional Center, 1181 Paddock Road,
Smyrna, Delaware 19977. *Pro Se* Defendant.

CARPENTER, J.

On this 29th day of July 2014, upon consideration of Defendant's Third Motion for Postconviction Relief, it appears to the Court that:

1. Defendant filed this *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61 Motion") on February 27, 2014. For the reasons set forth below, Defendant's Third Motion for Postconviction Relief is hereby **DENIED**.

2. Defendant was indicted on February 1, 1999, on the following counts: (1) Attempted Murder First Degree; (2) Possession of a Firearm During the Commission of a Felony; (3) Conspiracy First Degree; (4) Assault Second Degree; and (5) Possession of a Deadly Weapon During the Commission of a Felony. Defendant and his co-defendant simultaneously stood trial from February 15-18, 2000. Defendant was found guilty on February 18, 2000 and was sentenced on May 12, 2000. Defendant then appealed his conviction on June 14, 2000, and the Supreme Court affirmed the conviction on August 20, 2001.

3. On July 1, 2004, Defendant wrote to the Court requesting the appointment of counsel for a future Rule 61 Motion. The Court denied Defendant's request on July 22, 2004. Thereafter, on August 19, 2004, Defendant filed his first *pro se* Rule 61 Motion. The Court accepted Defendant's amendment to his Rule 61 Motion filed on June 17, 2005 and both the State and counsel were

given time to respond. Defendant's first Rule 61 Motion was denied on November 23, 2005. On appeal, the Delaware Supreme Court affirmed that decision on October 17, 2006. Defendant then filed a second Rule 61 Motion on February 1, 2010, which was denied by order of this Court on May 28, 2010. That decision was affirmed by the Delaware Supreme Court on September 20, 2010. Thereafter, on October 18, 2013, Defendant filed his third Rule 61 Motion, which was rejected by the assigned commissioner on January 17, 2014 for failure to comply with the standards for filing such motions.

4. On February 27, 2014, Defendant re-filed his third Rule 61 Motion,¹ the present motion, arguing that Defendant was denied effective assistance of counsel when this Court failed to appoint him counsel for his first Rule 61 Motion.

5. Defendant's claim, although couched in ineffective assistance of counsel, is not aimed at prior defense counsel but rather at this Court for declining to appoint counsel for Defendant's first Rule 61 Motion. When the Court denied Defendant's request for counsel for his first Rule 61 Motion, such was soundly within this Court's discretion.² The recent amendment to Rule 61, which requires the appointment of counsel in a defendant's first Rule 61 Motion, "was adopted May 6, 2013 and is *not* retroactive."³ As such, it does not apply to Defendant's

¹ Defendant also filed a Motion for Appointment of Counsel, which was denied by this Court on April 28, 2014.

² Super. Ct. Crim. R. 61 (2005).

³ *Roten v. State*, No. 476, 2013 (Del. Oct. 28, 2013) (ORDER).

request, which was made in 2004, nine years prior to the enactment of this rule change. Thus, the Court had discretion to decide whether to appoint counsel for Defendant and declined to do so. The Court finds no abuse of discretion in such decision.

Having found that Defendant's claim for relief is without merit, the Defendant's Third Rule 61 Motion is hereby **DENIED**.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.