

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

STATE OF DELAWARE,)	
)	
v.)	Cr. ID No. 9911016961
)	
DARREL PAGE,)	
)	
Defendant.)	
)	

Submitted: May 21, 2014
Decided: August 27, 2014

MEMORANDUM OPINION AND ORDER

Darrel Page, SBI 00410556, James T. Vaughn Correctional Center, Smyrna, Delaware.

Kathleen M. Jennings, Esquire, Delaware Department of Justice, Wilmington, Delaware.

DAVIS, J.

1. On June 17, 2003, after a trial by jury, Mr. Page was convicted of three counts of Murder in the First Degree, one count of Robbery Second Degree, one count of Conspiracy First Degree, one count of Endangering the Welfare of a Child, and various weapons charges. After the penalty phase on the Murder in the First Degree charges, the jury recommended a death sentence for Mr. Page. On February 24, 2006, the Court sentenced Mr. Page to life imprisonment without the possibility of parole for each count of Murder in the First Degree.

2. Mr. Page appealed his convictions and sentence to the Delaware Supreme Court. He was represented by counsel separate from his trial counsel in that proceeding. In the appeal, Mr. Page contended that (1) the State violated his Sixth Amendment right to a speedy trial; (2) he received ineffective assistance of counsel at trial; and (3) the trial judge erred in admitting certain

evidence -- photographs, a crime scene video, and a video of an out-of-court statement to police by Kim Still, a State's witness.

3. In an Opinion dated October 19, 2007, the Supreme Court affirmed Mr. Page's convictions and sentences. The Court held that Mr. Page was not denied his right to a speedy trial, and that this Court did not err or abuse its discretion in admitting the photographs and videos. The Supreme Court, however, did not address Mr. Page's ineffective assistance of counsel claims because that argument had not yet been considered by this Court.

4. On April 30, 2013, Mr. Page filed his third motion for postconviction relief (the "Third Motion"). This Court issued a detailed Memorandum Opinion and Order (the "Third Order") denying the Third Motion on August 13, 2013. On August 29, 2013, Mr. Page appealed the Third Order to the Supreme Court of Delaware. Subsequently, on September 19, 2013, Mr. Page seemingly filed an amendment to the Third Motion, entitled Amendment of Motion Rule 61(b)(6) (the "Amendment"). The Court purposely uses the word "seemingly" because Mr. Page had appealed the Third Order. As no other motion for postconviction relief was pending and Mr. Page was amending a Rule 61 motion, Mr. Page's September 19, 2013 filing must have been amending the Third Motion – a motion that this Court no longer had jurisdiction over because Mr. Page had already noted an appeal to the Supreme Court.

5. The Amendment, which was untimely given the Third Order and the appeal of the Third Order, supplemented the arguments made in the Third Motion. The Third Order clearly rendered moot the Amendment. Accordingly, this Court has not taken and will not take any action with respect to the Amendment.

6. The Supreme Court affirmed this Court's order denying the Third Motion on December 4, 2013. The Supreme Court entered its mandate on December 30, 2013.

7. On May 21, 2014, Mr. Page filed another motion for postconviction relief under Criminal Rule 61 (the “Fourth Motion”). In the Fourth Motion, Mr. Page contends he is entitled to relief under Rule 61(i)(5) because his right to effective assistance of counsel was violated. This marks the fourth time that Mr. Page has claimed he is entitled to relief under Rule 61 due to ineffective assistance to counsel.¹ Here, Mr. Page contends that his 6th Amendment rights were violated because trial counsel failed to use a medical record – a toxicology report – which demonstrated that the State’s purported primary witness, Reinford Muhammed, tested positive for opiates and benzodiazepines. The medical record relates to the admission of Mr. Muhammed to the hospital after Mr. Page’s co-conspirator, Michael Jones, shot Mr. Muhammed in the face and left Mr. Muhammed for dead.

Legal Standard under Superior Court Criminal Rule 61

8. Superior Court Criminal Rule 61 governs motions for postconviction remedy. Before addressing the substantive merits of any claim for postconviction relief, the Court must determine whether the defendant has satisfied the procedural requirements of Superior Court Criminal Rule 61 (“Rule 61”).²

9. Rule 61(i) pertains to bars of relief. Under Rule 61(i)(1), “[a] motion for postconviction relief may not be filed more than one year after the judgment of conviction is final.”³ Under Rule 61(i)(2) any ground not asserted in a prior postconviction proceeding is barred “unless consideration of the claim is warranted in the interest of justice.”⁴ Under Rule 61(i)(3), “[a]ny ground for relief not asserted in the proceedings leading to judgment of

¹ This Court set forth in the Third Order -- in detail -- the arguments made by Mr. Page in his initial two motions for postconviction relief and those made in the Third Motion. *See* Third Order at pp. 2-5. This Court incorporates by reference and relies upon the background portions of the Third Order for this Order.

² *Younger v. State*, 580 A.2d 552, 554 (Del. 1990); *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *State v. Mayfield*, 2003 WL 21267422, at *2 (Del. Super. Ct. June 2, 2003).

³ Del. Super. Crim. R. 61(i)(1).

⁴ Del. Super. Crim. R. 61(i)(2).

conviction ... is thereafter barred, unless the movant shows (A) cause for relief from the procedural default and (B) Prejudice from violation of the movant's rights."⁵ A defect under Rule 61(i)(1), (2), or (3), will not bar a movant's "claim that the court lacked jurisdiction or . . . a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity, or fairness of the proceedings leading to the judgment of conviction."⁶ Finally, Under Rule 61(i)(4), any ground for relief that was formerly adjudicated in the proceedings leading to conviction, postconviction proceedings, or a habeas corpus proceeding "is thereafter barred unless reconsideration of the claim is warranted in the interests of justice."⁷ "[T]he interest of justice has been narrowly defined to require that the movant show that the trial court lacked authority to convict or punish him."⁸

Legal Analysis and Application to Claims in Fourth Motion

10. Mr. Page's claims are barred by Rule 61(i)(1) as untimely. Mr. Page's claims are additionally barred by Rule 61(i)(2) as repetitive. Mr. Page raised his claims arising out of the trial testimony of Mr. Reinford in his second motion for postconviction relief. As stated in the Third Order, any claim Mr. Page has failed to raise by this point is barred, and remains barred, by Rule 61(i)(3). Mr. Page had more than ample opportunity to raise claimed deprivations of his constitutional rights during the proceedings leading to his convictions, direct appellate proceedings, the lengthy proceedings of his first three motions for postconviction relief. For example, in consideration of his first motion for postconviction relief, this Court and the Supreme Court took measures to thoroughly, fairly, and carefully review Mr. Page's claims. This Court appointed counsel to assist Mr. Page in his first motion. In prior proceedings, this

⁵ Del. Super. Crim. R. 61(i)(3).

⁶ Del. Super. Crim. R. (i)(5).

⁷ Del. Super. Crim. R. 61(i)(4).

⁸ *State v. Wright*, 653 A.2d 288, 298 (Del. Super. 1994).

Court has opined, and the Supreme Court has affirmed, that Mr. Page has suffered no deprivation of constitutional rights, by counsel, the Court, the State, or otherwise.

11. In consideration of the Fourth Motion, the Court again finds that Mr. Page has failed to demonstrate a violation of his constitutional rights which would warrant substantive consideration of his claims.

12. While Mr. Page claims ineffective assistance of trial counsel, Mr. Page asserts no credible reason why his new claims could not have been raised in the three prior motions for postconviction relief.

13. This Court and the Supreme Court have previously addressed Mr. Page's grievances regarding Ms. Muhammed's testimony in prior proceedings. This Court and the Supreme Court have held that these grievances lack merit. There is nothing new in the Fourth Motion. Mr. Page still has not demonstrated a miscarriage of justice, in the form of a substantiated claim of ineffective assistance of counsel or otherwise, which would cause this Court to consider his claims under Rule 61(i)(5).

14. The claims also fail under the standard for a new trial based on the existence of newly discovered evidence. For a defendant to succeed in obtaining a new trial based on newly discovered evidence, the defendant must establish:

(1) that the evidence is such as will probably change the result if a new trial is granted; (2) that it has been discovered since the trial and could not have been discovered before by the exercise of due diligence; and (3) that it is not merely cumulative or impeaching.⁹

In this case, whether Mr. Reinford used opiates or benzodiazepines would not change the result of Mr. Page's convictions at a new trial. As with Mr. Page's previous claims that Mr. Reinford

⁹ *Id.* (internal citations omitted).

committed perjury, that evidence, while potentially relevant, is simply not material enough to the charges of Murder in the First Degree to change the result at trial.

15. The Court declines to find that this attempt to characterize Mr. Reinford as potentially using opiates or benzodiazepines as new evidence which would change the jury's verdict.¹⁰ It therefore follows that Mr. Page has not demonstrated a miscarriage of justice that would excuse his claim from the procedural bars set forth in Rule 61 which prohibit Mr. Page from obtaining the relief he requests.

16. For the reasons stated, the Mr. Page's Motion for Postconviction Relief is **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

/s/ Eric M. Davis _____

Eric M. Davis
Judge

¹⁰ See *Downes v. State*, 94-09-0152, 1999 WL 743629, at *7 (Del. Super. Aug. 12, 1999) *aff'd*, 771 A.2d 289 (Del. 2001).