

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

August 5, 2015

Carlos Ortiz
SBI No. 004
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

***RE: State of Delaware v. Carlos Ortiz
Def. ID No. 0208005710***

Dear Mr. Ortiz:

This is my decision on your sixth Motion for Postconviction Relief. You were convicted of two counts of Rape in the First Degree, one count of Attempted Rape in the First Degree, six counts of Possession of a Firearm During the Commission of a Felony, one count each of Kidnaping in the First Degree, Possession of a Firearm by a Person Prohibited, Burglary in the First Degree, Aggravated Menacing, Terroristic Threatening, Criminal Contempt, and three counts of Endangering the Welfare of a Child. I sentenced you to 84 years at Supervision Level V, suspended after serving 68 years for declining levels of probation on June 16, 2003. The Supreme Court affirmed your convictions on January 15, 2004. You have previously filed five motions for postconviction relief. I have denied each one of them. You now allege

that the Court committed an error of law when it referred to the complaining witness as a “victim” in the jury instructions.

When reviewing a motion for postconviction relief, this Court must first consider the procedural requirements before addressing any substantive issues.¹ Superior Court Criminal Rule 61 has provided, since July 1, 2005, that a motion for postconviction relief may not be filed more than one year after the judgment of conviction is final. Prior to the rule change, a defendant had three years under Superior Court Criminal Rule 61 to file a motion for postconviction relief. For purposes of this motion your conviction became final on January 15, 2004, and your last day to file a motion for postconviction relief was January 15, 2007. You filed your sixth motion for postconviction relief on June 19, 2015, which is over eight years after the cut-off date. Thus, your Motion for Postconviction Relief is time-barred. Moreover, you could have raised your current argument in your direct appeal and/or first motion for postconviction relief, but did not do so. The failure to do so is another reason to deny your motion.² While there are exceptions to these procedural bars, you have not alleged any facts that would entitle you to the benefit of these exceptions. Therefore, I have denied your sixth Motion for Postconviction Relief.

¹ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

² See Del. Super. Ct. R. 61(i)(2) - (3).

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

ESB/sal

cc: Prothonotary
Counsel