

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

STATE OF DELAWARE)	
)	
)	I.D. No. 85002615DI
v.)	
)	
LEE A. ISRAEL)	
)	
Defendant.)	

Submitted: March 30, 2015

Decided: June 9, 2015

On Defendant's Third Motion for Postconviction Relief.
SUMMARILY DISMISSED.

On Defendant's Motion for Appointment of Counsel.
DENIED AS MOOT.

ORDER

Kathleen M. Jennings, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State

Lee A. Israel, Smyrna, Delaware, *pro se*

COOCH, R.J.

This 9th day of June, 2015, upon consideration of Defendant's *pro se* Third Motion for Postconviction Relief, it appears to the Court that:

1. Defendant Lee A. Israel was found guilty in November 1985 of one count of Rape First Degree, one count of Burglary First Degree, one count of Attempted Burglary Second Degree, and one count of Misdemeanor Theft.¹ Defendant was then sentenced in February

¹ For additional facts and procedural history not relevant to the instant motion, see *State v. Israel*, 1996 WL 190033 (Del. Super. Feb. 6, 1996).

1986 to life in prison plus fifty two years.² The Delaware Supreme Court affirmed Defendant's convictions on direct appeal.³

2. Defendant filed his First Motion for Postconviction Relief in July 1995. That motion was denied by this Court in February 1996 and the denial was affirmed by the Supreme Court of Delaware in June 1996.⁴ Defendant filed his Second Motion for Postconviction Relief in July 2004. That motion was summarily dismissed by this Court in September 2004 and the summary dismissal was affirmed by the Supreme Court of Delaware in February 2005.⁵ Defendant filed a federal habeas corpus petition in 2007, which was also denied.⁶
3. Defendant filed the instant motion on March 6, 2015. The Motion asserts two grounds for relief, listed here *in toto*:

Ground one: The movant was denied a fair trial when Lieutenant Wilkinson testified about the conclusions of two other fingerprint analyst[s] who were not available to testify at trial.

Ground two: The movant was denied a fair trial when Joseph M. Henry M.D., testified about the test results of specimen evidence sent to a laboratory for analysis as coming back positive.⁷

4. Defendant's Motion for Postconviction Relief is controlled by the recently amended Superior Court Criminal Rule 61 as the motion was filed after the new rule took effect on June 4, 2014.⁸ Under Superior Court Criminal 61(i), a Motion for Postconviction Relief can be potentially procedurally barred for time limitations, successive motions, procedural defaults, and former adjudications.⁹

² See *State v. Israel*, 1996 WL 190033, at *1 (Del. Super. Feb. 6, 1996).

³ See *Israel v. State*, 1986 WL 17349 (Del. Aug. 22, 1986).

⁴ See *State v. Israel*, 1996 WL 190033 (Del. Super. Feb. 6, 1996); *Israel v. State*, 1996 WL 283596 (Del. May 21, 1996).

⁵ See *State v. Israel*, 2004 WL 2240158 (Del. Super. Sept. 24, 2004); *Israel v. State*, 2005 WL 535349 (Del. Feb. 25, 2005).

⁶ See *Israel v. Carroll*, 2007 WL 1109286 (D. Del. Apr. 11, 2007).

⁷ Def.'s Mot. for Postconviction Relief at 3, D.I. 56 (Mar. 6, 2015).

⁸ The most recent set of amendments to Super. Ct. Crim. R. 61 took effect on June 4, 2014.

⁹ Super. Ct. Crim R. 61(i)(1)-(4).

5. Rule 61(i)(1) provides that a motion exceeds time limitations if it is filed more than one year after the conviction is finalized, or if the motion asserts a newly recognized, retroactively applied right more than one year after it is first recognized.¹⁰
6. Rule 61(i)(2) provides that a motion is successive if it is the second or subsequent motion made under this Rule, and such successive motions are prohibited unless the pleading requirements of 61(d)(2)(i) or (ii) are met.¹¹
7. Rule 61(i)(3) bars consideration any ground for relief “not asserted in the proceedings leading to the judgment of conviction,” unless the movant can show “cause for relief from the procedural default” and “prejudice from violation of the movant’s rights.”¹²
8. Rule 61(i)(4) bars consideration of any ground for relief formerly adjudicated in the case, including “proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus hearing.”¹³
9. Before addressing the merits of this Motion for Postconviction Relief, the Court must address any procedural requirements of Superior Court Criminal Rule 61(i).¹⁴ If a procedural bar exists, then the Court will not consider the merits of the postconviction claim unless the Defendant can show that the exception found in Rule 61(i)(5) applies.¹⁵
10. Rule 61(i)(5), as recently amended, provides that consideration of otherwise procedurally barred claims is limited to claims that the Court lacked jurisdiction, or claims that satisfy the new pleading standards set forth in 61(d)(2)(i) and (ii).¹⁶ The new pleading standards require that the Motion either:

¹⁰ Super. Ct. Crim. R. 61(i)(1).

¹¹ Super. Ct. Crim. R. 61(i)(2). For further discussion of the pleading standards articulated in the newly amended Rule, see *infra*.

¹² Super. Ct. Crim. R. 61(i)(3).

¹³ Super. Ct. Crim. R. 61(i)(4).

¹⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹⁵ Super. Ct. Crim. R. 61(i)(5).

¹⁶ *Id.*

- (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 Supreme Court, applies to the movant's case and renders the conviction . . . invalid.¹⁷

11. This Court finds that all of Defendant's claims are time-barred pursuant to Rule 61(i)(1) as Defendant's motion was filed more than one year after Defendant's conviction was finalized on direct appeal.¹⁸ Further, Defendant's first claim is barred for former adjudication pursuant to 61(i)(4). Defendant argues that he was denied a fair trial because fingerprint analysis expert Lieutenant Wilkinson was permitted to testify about comparisons of the Defendant's fingerprints made by other fingerprint technicians within his office.¹⁹ Defendant fails however, to acknowledge that trial counsel almost immediately objected to this testimony, and that the Court limited Lieutenant Wilkinson's testimony to personal knowledge.²⁰ As the issue of the scope of Lieutenant Wilkinson's testimony was resolved at trial, the Court finds Defendant's claim to be formerly adjudicated and therefore barred under Rule 61(i)(4).
12. Defendant's second claim is that he was denied a fair trial because the laboratory technician who performed testing on fluid samples taken from the victim did not testify at trial. This claim is barred by reason of procedural default per Rule 61(i)(3). Defendant failed to raise this claim during trial, on his direct appeal, or in his first two motions for postconviction relief. Further, Defendant has not set forth any new

¹⁷ Super Ct. Crim R. 61(d)(2)(i).

¹⁸ See Super. Ct. Crim. R. 61(i)(1) (barring postconviction motion filed more than one year after judgment of conviction is final); Super. Cr. Crim. R. 61(m)(2) ("A judgment of conviction is final for the purpose of this rule . . . when the Supreme Court issues a mandate or order finally determining the case on direct review."). See also *Felton v. State*, 945 A.2d 594 (Del. 2008) (measuring start of filing period from date direct Supreme Court mandate was issued and direct appeal process concluded). The Supreme Court mandate affirming the judgment of this Court was issued in Defendant's case in 1986. See *Israel v. State*, 1986 WL 17349 (Del. Aug. 22, 1986). Defendant filed his Motion for Postconviction Relief in 2015, well past the one year deadline.

¹⁹ See Def.'s Memo of L. at 2-3, D.I. 57 (Mar. 6, 2015).

²⁰ See Trial Tr. at 241-42, D.I. 15 (Jan. 28, 1986).

facts or law sufficient to show “cause for relief from the procedural default” and “prejudice from violation of the movant’s rights.”²¹

13. Having determined that all of Defendant’s claims are procedurally barred in more than one way, this Court further finds that Defendant fails to demonstrate, pursuant to 61(i)(5), that any of his nine claims are exempt from the procedural bars of 61(i).²² Specifically, none of Defendant’s arguments articulate any factual basis to survive the pleading standards of 61(d)(2) as required by the Rule.²³ As a result of Defendant’s failure to meet the pleading standards referenced in 61(i)(5), Defendant’s Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

14. In Defendant’s separate Motion for Appointment of Counsel, Defendant argues that good cause exists for the appointment of counsel because the motion has “substantive merit” and because “the motion satisfies the pleading requirements of subparagraphs (2)(ii) of subdivision (d) of Rule 61.”²⁴ This Court disagrees, and as a result, pursuant to Rule 61(e)(4), this Court declines to appoint counsel.²⁵ Defendant’s Motion for Appointment of Counsel is **DENIED AS MOOT**.

Therefore, Defendant’s Motion for Postconviction Relief is **SUMMARILY DISMISSED**. Defendant’s Motion for Appointment of Counsel is **DENIED AS MOOT**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

cc: Prothonotary
Investigative Services

²¹ Super. Ct. Crim. R. 61(i)(3).

²² Super. Ct. Crim R. 61(i)(5) (requiring satisfaction of the pleading requirements in 61(d)(2)(i)-(ii) for review of an otherwise barred claim);

²³ Super. Ct. Crim. R. 61(i)(5) (referring to 61(d)(2)(i) and (ii) for requisite pleading standards).

²⁴ Def.’s Mot. for Appointment of Counsel at 2, D.I. 58 (May 18, 2015).

²⁵ See Super. Ct. Crim. R. 61(e)(4) (“For an indigent movant’s second or subsequent postconviction motion, the judge may appoint counsel . . . only if the judge determines that the . . . motion satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule.”).