

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE) ID No. 1006020664
) In and for Kent County
 v.)
) RK-07-0012-01 Trf. Co. > 100 GR (F)
 JUAN C. BENITEZ,) RK-07-0015-01 Consp. 2nd (F)
) RK-09-0544-01 Del. NSII CS (F)
 Defendant.) RK-09-0548-01 Consp. 2nd (F)

Submitted: August 14, 2017

Decided: October 6, 2017

Kathleen A. Dickerson, Esq., Department of Justice, Dover, Delaware. Attorney for the State.

Juan C. Benitez, *Pro se.*

*Upon Consideration of Defendant's
Motion for Postconviction Relief
Pursuant to Superior Court Criminal Rule 61*

Witham, Resident Judge

ORDER

Upon consideration of Juan C. Benitez's ("Benitez") Motion For Postconviction Relief, Amended Motion for Postconviction Relief, Defense Counsel's Affidavit, the State's response, and the record in this case, it appears:

Benitez pled guilty to one count of Trafficking Cocaine > 100 grams, two counts of Conspiracy in the Second Degree, and one count of Delivery of a Narcotic Schedule II Controlled Substance, Cocaine on April 4, 2011. He was immediately sentenced in accordance with the recommendations in the Plea Agreement to forty-four years at Level V, suspended after serving eight years minimum mandatory followed by probation.¹ Benitez filed two motions to modify his sentence in 2011 which were denied on July 14, 2011 and August 18, 2011. Next on February 11, 2015 Benitez filed a Motion for Postconviction Relief, *pro se*. He alleges two grounds for relief including ineffective assistance of counsel. On May 20, 2016 Benitez filed an "Amended Motion for Postconviction Relief: Supplement of record in Postconviction of newly Discovered Evidence regarding OCME [Office of Chief Medical Examiner] Scandal." The motion and amended motion were set on a briefing schedule. On June 1, 2017 Benitez was ordered to Level III probation. On July 5, 2017 he was deported to the Dominican Republic. On July 17, 2017, the Court approved Probation and Parole's request to discharge Benitez.

Under Delaware law the Court must first determine whether Benitez has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may

¹ The docket reflects that a Court interpreter was present for the plea and sentencing. *State v. Benitez*, Del. Super., ID No. 1006020664, DI 21.

consider the merits of the postconviction relief claims.² Before reaching the procedural bars to relief listed in Rule 61(i), a threshold issue must be addressed. Rule 61(a)(1) “governs the procedure on an application by a person in custody or subject to future custody under a sentence” at the Superior Court.³ The Delaware Supreme Court has explained that a person loses standing to move for postconviction relief under Rule 61 where the defendant is not in custody or subject to future custody for the underlying offense or challenged sentence.⁴ Clearly Benitez is no longer in custody or subject to future custody under the sentence as he has been discharged from probation and has also been deported from the country, therefore he clearly lacks standing to pursue his claim for relief under Rule 61. Thus there is no need to reach the merits of Benitez’s claims.

Additionally, the pending motion was filed more than one year after his conviction became final. Thus pursuant to Superior Court Criminal Rule 61(i)(1), Benitez’s motion is time-barred unless he successfully “asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final.”⁵ Benitez makes no attempt to allege such a right therefore his motion is clearly

² *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

³ Super. Ct. Crim. R. 61(a)(i).

⁴ *State v. Ruiz*, 2008 SL 1961187 at *2 (Del May 7, 2008), (citing *Pumphrey v. State*, 2007 WL 3087405 at *1 (Del. Oct. 23, 2007)). See also *State v. Silochan*, 2008 WL 361848 (Del. Super. Feb. 5, 2008) denying postconviction relief under Rule 61 where a defendant claimed he was not informed he faced deportation. Defendant was no longer subject to custody and deportation was a collateral consequence. Defendant had no standing.

⁵ *Cobb v. State*, 1996 Del. LEXIS 2 at *6; *State v. Mills*, 1996 Del. LEXIS 208 at *5;

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procedurally barred by Rule 61(i)(1). Benitez simply claims that he only recently became aware that the OCME scandal impacted his case. This is not sufficient to overcome the procedural bar.

Accordingly, I find that Benitez's motion for postconviction relief is summarily **DISMISSED** for lack of standing pursuant to Superior Court Criminal Rule 61(a)(1) and procedurally time-barred pursuant to Superior Court Criminal Rule 61(i)(1).

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

RJW/dsc