

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)
v.) ID# 91009844DI
CHRISTOPHER R. DESMOND,)
Defendant)

Submitted: June 12, 2018
Decided: July 10, 2018

On Defendant’s Eleventh Motion for Postconviction Relief.
SUMMARILY DISMISSED.
On Defendant’s Motion to Amend. DENIED
On Defendant’s “Motion For Recuse.” DENIED

ORDER

Gregory E. Smith, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Christopher R. Desmond, James T. Vaughn Correctional Institution, Smyrna,
Delaware, pro se.

COOCH, R.J.

This 10th day of July 2018, upon consideration of Defendant’s Eleventh
Motion for Postconviction Relief, it appears to the Court that:

- 1. Defendant was convicted in November 1992 of Robbery First Degree
and related crimes. The factual and procedural history of both the case
and the “plethora” of subsequent postconviction actions are
incorporated by reference from the Court’s opinion issued January 5,

2011.¹ For an overview of Defendant's first six motions for postconviction relief, see *State v. Desmond*, 2011 WL 91984 (Del. Super. Ct. Jan. 5, 2011). In that opinion, the Court procedurally barred Defendant's seventh motion for postconviction relief by determining that Defendant's claims were not asserted in prior proceedings or were previously adjudicated.²

2. Subsequently, this Court summarily dismissed Defendant's eighth motion for postconviction relief on March 7, 2012, finding that Defendant's eighth motion was procedurally barred.³ The Delaware Supreme Court affirmed that decision on August 9, 2012.⁴
3. On February 26, 2013, this Court denied Defendant's ninth motion for postconviction relief as procedurally barred as untimely and repetitive.⁵ As a consequence, Defendant's motion for appointment of counsel was denied as moot.
4. In 2014, this Court deemed three filings listed below to be "subsequent motions pursuant to Superior Court Criminal Rule 61 for Postconviction Relief."⁶

1. October 7, 2013: Motion to Amend Defendant's Correction of Illegal Sentence.

2. October 14, 2013: Motion to Amend Original Dismissal Motion DI 29, DI 31 Pursuant [sic] Superior Court Civil Rule 15(c), (d) and Superior Court Criminal Rules of Procedure Rule 57(d).

3. October 14, 2013: Motion to Amend Pursuant to the Superior Court Criminal Rule 61(e) and 61(b)(6) Appointment of Counsel for the Unresolved D.I. 64.⁷

As a result, this Court denied the motions (interpreted as the tenth motion for postconviction relief) as repetitive pursuant to Rule 61(i)(2) and procedurally defaulted pursuant to Rule 61(i)(3).⁸

¹ *State v. Desmond*, 2011 WL 91984, at *1-4 (Del. Super. Ct. Jan. 5, 2011).

² *Id.* at *14-17.

³ *Desmond v. State*, 49 A.3d 1192, 2012 WL 3252923 (Del. Aug. 9, 2012).

⁴ *Id.*

⁵ *State v. Desmond*, 2013 WL 1090965

⁶ *State v. Desmond*, I.D. No. 9100984DI, Del. Super., Jan. 10, 2014 (LETTER ORDER).

⁷ *State v. Desmond*, I.D. No. 9100984DI, Del. Super., Jan. 10, 2014 (LETTER ORDER).

⁸ *Id.*

5. On August 21, 2017, Defendant filed a “Motion for Clarification of Ambiguous Interpretation of Superior Court Criminal Rule 35(a) and the Delaware Rules of Evidence 609(c) 11 Del. C. § 4214(a) and 11 Del. C. § 6502.”⁹ This Court denied the motion on the basis that it “lack[ed] any factual or legal merit.”¹⁰
6. On May 18, 2018, Defendant filed this motion, which is his eleventh motion for postconviction relief. In this motion, Defendant challenges his sentences “because they were imposed consecutively with respect to other sentences, and because [Defendant] remains confined in state prison under the non-aggregated terms of these sentences.”¹¹ As a result, Defendant alleges that this motion satisfies the jurisdictional prerequisite under Rule 61(a)(i).¹² On June 4, 2018, Defendant filed a motion to amend to include an additional claim in which Defendant alleges he was denied his sixth amendment right to counsel during the plea offer.¹³ Consequently, Defendant’s lack of counsel made Defendant “unable to obtain the benefits of a lesser sentence of twenty years.”¹⁴ On June 12, 2018, Defendant filed a “Motion for Recuse.”¹⁵
7. Rule 61 is the remedy for defendants “in custody under a sentence of this court seeking to set aside the judgment of conviction”¹⁶ This Court “must first consider the procedural requirements of Rule 61 before addressing any substantive issues.”¹⁷ The procedural bars of Rule 61 include timeliness,¹⁸ successiveness,¹⁹ procedural default,²⁰ and former adjudication.²¹ A motion is untimely if it is filed

⁹ *State v. Desmond*, Del. Super. I.D. No. 9411016337, Davis, J. (Sept. 8, 2017) (Order denying motion for clarification of ambiguous interpretation of Superior Court Criminal Rule 35(a)).

¹⁰ *Id.*

¹¹ Def.’s Mot. for Postconviction Relief at 1.

¹² *Id.* at 2.

¹³ Def.’s Mot. to Amend at 1.

¹⁴ *Id.*

¹⁵ Def.’s Mot. for Recuse.

¹⁶ Del. Super. Ct. Crim. R. 61.

¹⁷ *State v. Stanford*, 2017 WL 2484588, at *2 (Del. Super. Ct. June 7, 2017) (quoting *Bradley v. State*, 135 A.3d 748, 756 (Del. 2016)).

¹⁸ *Id.* at 2 (citing Del. Super. Ct. Crim. R. 61(i)(1)).

¹⁹ *Id.* at 2 (citing Del. Super. Ct. Crim. R. 61(i)(2)).

²⁰ *Id.* at 2 (citing Del. Super. Ct. Crim. R. 61(i)(3)).

²¹ *Id.* at 2 (citing Del. Super. Ct. Crim. R. 61(i)(4)).

more than one year after the conviction is finalized or defendant asserts a new constitutional right that is retroactively applied more than one year after it is first recognized.²² A motion is successive if it is a “second or subsequent motion.”²³ If any of these bars apply, the movant must show entitlement to relief under Rule 61(i)(5).²⁴ The contentions in a Rule 61 motion must be considered on a “claim-by-claim” basis.²⁵

8. Defendant’s motion is procedurally barred because it is both untimely and repetitive.
9. According to Rule 61(i)(1), “[a] motion for postconviction relief may not be filed more than one year after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.”²⁶ Defendant has not asserted that either Rule 61(i)(2) exception is applicable here. Thus, Defendant’s motion is untimely.
10. As this is Defendant’s eleventh motion for postconviction relief, it is repetitive pursuant to Delaware Superior Court Criminal Rule 61(i)(2). According to Rule 61(i)(2), successive motions for postconviction relief are procedurally barred unless the defendant:

- (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 or death sentence invalid.²⁷

Defendant has not asserted that either Rule 61(i)(2) exception is applicable here. Thus, Defendant cannot overcome the procedural bar

²² Del. Super. Ct. Crim. R. 61(i)(1).

²³ Del. Super. Ct. Crim. R. 61(i)(2).

²⁴ *Stanford*, WL 2484588, at *2.

²⁵ *State v. Reyes*, 155 A.3d 331, 342 n.15 (Del. 2017) (holding that “Rule 61 analysis should proceed claim-by-claim, as indicated by the language of the rule.”).

²⁶ Del. Super. Ct. Crim. R. 61(i)(1).

²⁷ Del. Super. Ct. Crim. R. 61(d)(2).

in Rule 61(i)(2). Defendant has not alleged that new evidence exists nor that a new rule of constitutional law made retroactive to cases on collateral review is applicable to his case.

11. Defendant fails to demonstrate a basis for recovery pursuant to Del. Super. Ct. Crim. R. 61. Accordingly, Defendant's Eleventh Motion for Postconviction Relief is **SUMMARILY DISMISSED**. Defendant's Motion to Amend and for Recuse are thereby both **DENIED**.

IT IS SO ORDERED.



Richard R. Cooch, J.

cc: Prothonotary
Investigative Services