

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)
)
 v.) I.D. No. 1206018361
)
 Harry W. Anderson)
)
 Defendant.)

Submitted: February 11, 2019
Decided: April 23, 2019

Upon Defendant's Motion for Postconviction Relief
SUMMARILY DISMISSED

Upon Defendant's Request for Appointment of Postconviction Counsel
DENIED

Upon Defendant's Request for an Evidentiary Hearing
DENIED AS MOOT

ORDER

Upon consideration of the Motion for Postconviction Relief ("PCR Motion") filed by Defendant Harry W. Anderson ("Defendant"); Rule 61 of the Superior Court Criminal Rules of Procedure ("Rule 61"); the facts, arguments, and legal authorities set forth by Defendant; statutory and decisional law; and the entire record in this case, the Court hereby finds as follows:

1. On June 22, 2012, Defendant was arrested. On September 24, 2012, a grand jury issued an indictment for multiple counts of Felony Theft, Burglary in the Third Degree, and Criminal Mischief.

2. On January 24, 2013, Defendant pled guilty to two counts of Burglary in the Third Degree.

3. By Order dated September 20, 2013, Defendant was sentenced as a habitual offender on one burglary count, to six years at Level V and, on the other count, to three years at Level V suspended for eighteen months at Level III probation.

4. Defendant presented a direct appeal to the Delaware Supreme Court. The Delaware Supreme Court affirmed Defendant's conviction and sentence.¹

5. Defendant filed a first timely motion for postconviction relief and a subsequent motion to withdraw Defendant's guilty plea. This Court considered and denied both motions.²

6. Defendant appealed this Court's denial of Defendant's motion to withdraw his guilty plea. By Order dated March 14, 2018, the Delaware Supreme Court affirmed the Superior Court's decision on the grounds that this was Defendant's second motion for postconviction relief following the entry of his guilty plea which is subject to summary dismissal under Rule 61(d)(2).³

¹ *Anderson v. State*, 2014 WL 3511717 (Del. July 14, 2014).

² *State v. Anderson*, I.D. No. 1206018361 (Del. Super. Oct. 10, 2017) (ORDER) (denying Defendant's motion to withdraw guilty plea), *aff'd*, 2018 WL 1341714 (Del. Mar. 14, 2018); *State v. Anderson*, 2015 WL 121879 (Del. Super. Jan. 6, 2015) (denying Defendant's first timely motion for postconviction relief).

³ *Anderson v. State*, 2018 WL 1341714, at *1.

7. On February 8, 2019, Defendant filed the PCR Motion that is currently before the Court.⁴ Defendant alleges that he received ineffective assistance of counsel, that his guilty plea was coerced, and that his conviction was unconstitutional. Defendant also requests this Court to appoint postconviction counsel and to hold an evidentiary hearing.

8. Postconviction relief is a “collateral remedy which provides an avenue for upsetting judgments that have otherwise become final.”⁵ Rule 61(d)(2) governs Defendant’s PCR Motion.⁶ Under Rule 61(d)(2), the Court shall summarily dismiss a second or subsequent motion for postconviction relief unless the movant was convicted *after a trial* and the motion pleads with particularity either that (i) 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) 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.⁷

⁴ Accordingly, the April 6, 2017 version of Rule 61 applies. *See Washington v. State*, 2014 WL 4243590, at *2 (Del. Aug. 26, 2014) (applying the version of Rule 61 in effect when defendant originally filed his postconviction motion).

⁵ *Flamer v. State*, 585 A.2d 736, 745 (Del. 1990).

⁶ Rule 61(d)(2) applies to second or subsequent motions for postconviction relief.

⁷ Super. Ct. Crim. R. 61(d)(2)(i)–(ii); Super. Ct. Crim. R. 61(i)(2)(i).

9. Defendant's PCR Motion follows the entry of a guilty plea and is therefore subject to summary dismissal pursuant to Rule 61(d)(2) and in accordance with the Delaware Supreme Court's March 14, 2018 Order. Moreover, Defendant raises grounds for relief that have already been considered in Defendant's numerous motions and appeals. Both this Court and the Delaware Supreme Court have issued decisions ruling that Defendant's guilty plea was a knowing, intelligent, and voluntary waiver of Defendant's constitutional rights, and that Defendant's representation was effective throughout the proceedings leading to Defendant's conviction.⁸

NOW, THEREFORE, this 23 day of April, 2019, Defendant's Motion for Postconviction Relief is hereby SUMMARILY DISMISSED. Accordingly, Defendant's request for appointment of postconviction counsel is DENIED and Defendant's request for an evidentiary hearing is DENIED AS MOOT.

IT IS SO ORDERED.



The Honorable Andrea L. Rocanelli

cc: Criminal Prothonotary
Harry W. Anderson

⁸ *E.g.*, *Anderson v. State*, 2014 WL 3511717, at *2-3 (Del. July 14, 2014); *State v. Anderson*, 2015 WL 121879, at *2-3 (Del. Super. Jan. 6, 2015).