IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
v.	)	**ID Nos. 1703004263 and**
	)	**1703015343**
BRANDON BROWN,	)	**Cr. A. Nos. IN18-02-1150, etc.**
Defendant.	)	

Submitted: June 20, 2019
Decided: July 18, 2019

ORDER DENYING MOTION FOR REARGUMENT

This 18th day of July, 2019, upon consideration of the Defendant Brandon Brown's *Pro Se* Motion for Reargument (D.I. 37)[1] and the record in this matter, it appears to the Court that:

(1) In August of 2017, a grand jury returned two different indictments against Brandon Brown (and some co-defendants) charging him multiple counts of burglary, aggravated menacing, theft, shoplifiting and related charges stemming from a multitude of offenses that occurred in January, February, and March of 2017.[2]

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[1] Because there are multiple Uniform Case Numbers assigned to this matter, the Court, for simplicity sake, uses only the docket entry assignments made in Case Number 1703004263.

[2] Indictment, *State v. Brandon Brown,* ID No. 1703004263 (Del. Super. Ct. Aug. 7, 2017) (D.I. 2); Indictment, *State v. Brandon Brown,* ID No. 1703015343 (Del. Super. Ct. Aug. 7, 2017) (D.I. 2).

(2) In February of 2018, Brown pleaded guilty to six of those charges (five from the indictments, one by new information.)[3] His sentencing occurred a few months later, after the State filed a habitual criminal petition.[4] Brown was sentenced to an aggregate of 25 years of Level V incarceration, suspended after serving 12 years (per the provisions of 11 *Del. C.* § 4214(c)), for decreasing levels of quasi-incarceration and probation.[5]

(3) Brown filed no direct appeal from his convictions or sentence, but did previously file an unsuccessful *pro se* application for sentence reduction.[6]

(4) Brown recently moved both for postconviction relief under Superior Court Criminal Rule 61 and for appointment of counsel to assist him in pursuing that relief.[7] On May 15, 2019, the Court issued an order to expand the record relating to the Rule 61 motion; the Court, via that same order, denied Brown's motion for the appointment of counsel.[8] The Court, applying Superior Court Criminal Rule

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3 Plea Agreement and TIS Guilty Plea Form, *State v. Brandon Brown,* ID Nos. 1703004263, etc. (Del. Super. Ct. Feb. 27, 2018) (D.I. 24).

4 D.I. 26 and 27.

5 Sentencing Order, *State v. Brandon Brown,* ID Nos. 1703004263, etc. (Del. Super. Ct. June 29, 2018) (D.I. 29).

6 D.I. 30 and 31.

7 D.I. 32 and 33.

8 D.I. 36.

61(e)(2), found that Brown's postconviction motion failed to set forth a "substantial [ineffective assistance of counsel] claim" and failed to demonstrate any "specific exceptional circumstances warranting the appointment of counsel."[9] The substantive motion for postconviction relief remains pending.[10]

(5) Brown has now filed a motion for reargument under Superior Court Criminal Rule 57(d) and Civil Rule 59(e) asking the Court to reconsider its denial of appointment of counsel.[11]

(6) In Delaware, there is no specific criminal rule governing motions for reargument.[12] Under Superior Court Criminal Rule 57(d), however, the Court "shall regulate its practice in accordance with the applicable Superior Court civil rule or in any lawful manner not inconsistent with these rules or the rules of the Supreme

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9 *Id.* at ¶ 13.

10 *Id.*

11 Brown styles his request a "letter memorandum requesting . . . reconsideration" of the Court's May 15th order denying appointment of postconviction counsel. (D.I. 37). But no matter the label, Brown's is a motion for reargument under this Court's rules. *See Samuel v. State,* 2010 WL 3245109, at *1 (Del. Aug. 17, 2010) ("A timely-filed motion for reargument is 'the proper device for seeking reconsideration" of [this Court]'s findings of fact and conclusions of law.") (citations omitted).

12 *State v. Binaird*, 2016 WL 1735504, at *1 n.2 (Del. Super. Ct. Apr. 26, 2016); *State v. Zachary*, 2013 WL 5783388, at *1, n.1 (Del. Super. Ct. Sept. 23, 2013).

Court."[13] Thus, Superior Court Civil Rule 59(e) is controlling in this criminal matter.[14]

(7) And under that rule, Brown's motion for "reconsideration" (*i.e.*, reargument) had to be served and filed within five days of this Court's May 15th denial order.[15] So Brown had until May 22nd to serve and file his motion for reargument.[16] Brown's reargument motion was filed almost a month later—on June 20, 2019—and is, therefore, untimely.[17] Under settled Delaware law, this Court has no authority to extend the time in which to move for reargument.[18] And because Brown's reargument motion is untimely, this Court has no jurisdiction to consider it.[19]

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13 SUPER. CT. CRIM. R. 57(d).

14 *Dickens v. State*, 2004 WL 1535814, at *1 n.3 (Del. June 25, 2004); *Parker v. State*, 2001 WL 213389, at *1 n.4 (Del. Feb. 26, 2001); *Binaird*, 2016 WL 1735504, at *1 n.2; *Zachary*, 2013 WL 5783388, at *1, n.1.

15 SUPER. CT. CIV. R. 59(e) (made applicable by SUPER. CT. CRIM. R. 57(d)); *Haskins v. State*, 2008 WL 644200, at *1 (Del. March 11, 2008); *Zachary*, 2013 WL 5783388, at *1, n.1.

16 *See* SUPER. CT. CRIM. R. 45(a) (excluding Saturdays, Sundays, and legal holidays).

17 *See Colon v. State*, 2008 WL 5533892 (Del. Nov. 13, 2008) (motion to reargue filed by inmate six days after the filing of the order sought to be reargued was untimely); *Samuel,* 2010 WL 3245109 (motion to reargue filed by inmate one day after the five-day filing deadline was untimely).

18 *Colon*, 2008 WL 5533892, at *1 (citing SUPER. CT. CIV. R. 6(b)); *Hessler, Inc. v. Farrell,* 260 A.2d 701, 701 n.1 (Del. 1969) (Under Civil Rule 6(b), this Court "has divested itself of the power to enlarge the time for a motion for reargument.").

19 *Boyer v. State*, 2007 WL 452300, at *1 (Del. Feb. 13, 2007) (concluding that this Court, "in fact, had no jurisdiction to consider" substance of an untimely motion for reargument) (citing

(8) Moreover, even when timely, it is well-settled that a motion for reargument is not a device for just repeating arguments already presented or making new arguments.[20] A proper motion for argument establishes that the Court "overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision."[21] And a proper motion does so by exposing "newly discovered evidence, a change of law, or manifest injustice."[22] Yet, Brown's does none of that here.[23] Instead, he merely suggests (or, more aptly, re-suggests) that as an inmate serving a lengthy sentence, he should be afforded a postconviction attorney at State

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Preform Building Components, Inc. v. Edwards, 280 A.2d 697, 698 (Del. 1971)); *Brooks v. State*, 2008 WL 5250269, at *1 (Del. Dec. 18, 2008) ("It is well-settled that the Superior Court has no jurisdiction to consider an untimely motion for reargument."); *Samuel,* 2010 WL 3245109, at *1 ("If a motion for reargument is untimely filed, the motion cannot be considered by the Superior Court.").

20 *State v. Abel*, 2011 WL 5925284, at *1 (Del. Super. Ct. Nov. 28, 2011) ("It is well settled that a motion for reargument is not an opportunity for a party to revisit arguments already decided by the Court or to present new arguments not previously raised."); *State v. Remedio,* 2015 WL 511059, *1 (Del. Super. Ct. Jan. 26, 2015) (Rule 59(e) motion "is not a device for raising new arguments or rehashing those already presented.").

21 *Bd. of Managers of the Del. Criminal Justice Info. Sys. v. Gannet Co.*, 2003 WL 1579170, at *1 (Del. Super. Ct. Jan. 17, 2003); *Melton v. State,* 2013 WL 4538071, at*1 (Del. Aug. 22, 2013) ("The proper purpose of a motion for reargument is to request the trial court to reconsider whether it overlooked an applicable legal precedent or misapprehended the law or the facts in such a way as to affect the outcome of the case.").

22 *Brenner v. Village Green, Inc.,* 2000 WL 972649, at *1 (Del. Super. Ct. May 23, 2000); *Reid v. Hindt*, 2008 WL 2943373, at *1 (Del. Super. Ct. July 31, 2008).

23 *See generally,* Def.'s Reargue Mot., at 1-3.

expense to attack the plea agreement he entered with the guidance of experienced and well-respected defense counsel based on no more than cursory claims of ineffectiveness. That is hardly the stuff of which a valid reargument application is made. Thus, even if Brown's was a proper and timely motion under Rule 59(e), it would not warrant exercise of the Court's discretion to grant either reargument or the appointment he seeks.[24]

(9) Brown's Motion for Reargument (D.I. 37) of his Motion for Appointment of Counsel (D.I. 33) is **DENIED**.

SO ORDERED this 18th day of July, 2019.

Paul R. Wallace, Judge

Original to Prothonotary

cc: Kelly H. Sheridan, Deputy Attorney General
Eugene J. Maurer, Jr., Esquire
Brandon Brown, *pro se*

[24] *See Remedio,* 2015 WL 511059, *1 ("The merit of a Rule 59(e) reargument motion is directed to the sound discretion of this Court."); *also see* SUPER. CT. CIV. R. 61(e)(2) (providing that the Court "***may*** appoint counsel for an indigent movant's first timely postconviction motion and request for appointment of counsel if the motion seeks to set aside a judgment of conviction that resulted from a plea of guilty" if certain criteria are met) (emphasis added).