

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 Plaintiff,)
)
)
 BRUCE J. CARR,)
)
)
 Defendant.)

Cr. ID No. 82002234DI

Submitted: August 16, 2019

Decided: November 4, 2019

**COMMISSIONER'S REPORT AND RECOMMENDATION THAT
DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE SUMMARILY DISMISSED**

Annemarie Puit, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Bruce J. Carr, James T. Vaughn Correctional Center, Smyrna, Delaware,
pro se.

PARKER, Commissioner

This 4th day of November 2019, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND AND PROCEDURAL HISTORY

1. In 1982, Defendant Bruce J. Carr was convicted of kidnapping, conspiracy, rape and attempted rape, and was sentenced to six consecutive life terms plus forty years.
2. The Delaware Supreme Court affirmed Carr's conviction and sentence on direct appeal.¹
3. Thereafter, Carr filed many unsuccessful petitions seeking to overturn his conviction and sentence. This is Carr's eleventh Rule 61 motion for postconviction relief.²
4. In one of his unsuccessful post trial petitions, Carr admitted his guilt to the charges for which he was convicted.³
5. On August 8, 2019, Carr filed the subject Rule 61 motion. In the subject motion, Carr claims that he only recently became aware that a plea offer was offered to him as well as his co-defendant. His co-defendant accepted the plea offer and was

¹ *Carr v. State*, Del.Supr., No. 322, 1982, Horsey, J. (November 9, 1983)(Order).

² See, *State v. Carr*, 2017 WL 4286201, *1 (Del.Super.)(Carr's Rule 61 motion for postconviction relief filed on September 11, 2017 was his tenth Rule 61 motion).

³ See, Superior Court Docket No. 88, Petition for Modification of Sentence filed May 22, 1991, at pg. 3 (Reasons Why Carr's Sentence Should be Modified- "Petitioner has admitted his involvement in the offenses and expressed remorse.").

sentenced to two consecutive life sentences. Carr now contends that if he was aware that the plea offer had also been offered to him, he would also have accepted it.

6. Carr's co-defendant accepted a plea offer on June 14, 1982. His co-defendant pled guilty to two counts of rape in the first degree and was sentenced to two consecutive terms of life imprisonment.⁴

7. Carr and his co-defendant were jointly indicted on all the same charges. Carr was aware at the time of his trial in 1982 that his co-defendant had accepted a plea offer. In fact, Carr filed a motion in 1982, after he was convicted at trial, seeking an acquittal due to the alleged prejudice caused by a newspaper article reporting on his co-defendant's guilty plea.⁵

8. There was no question that Carr knew that his co-defendant accepted a plea in 1982, prior to his trial, to two counts of rape in the first degree and was sentenced to two consecutive terms of life imprisonment given his 1982 post-trial motion acknowledging such plea and sentence. There is also no question that prior to his trial, Carr refused to admit his guilt and refused to accept a plea given his contemporaneous letter to the court dated April 20, 1982, complaining that his trial counsel wanted him to admit his guilt and take a plea but he refused to do so.⁶

⁴ *Collins v. State*, 1987 WL 37172, *1 (Del.).

⁵ By letter dated July 6, 1982 the court forwarded Carr's *pro se* "Motion for Acquittal" to his counsel and advised that no action would be taken on the motion unless filed by counsel.

⁶ See, April 26, 1982 letter from the court to Peter N. Letang, Esquire enclosing Mr. Carr's April 20, 1982 handwritten letter in which Carr complained that Mr. Letang wanted him to admit his guilt and take a plea but that Carr refused to do so.

9. After Carr's complaints to the court and his filing of a disciplinary complaint, Carr's trial counsel, Peter Letang, Esquire, was permitted to withdraw as counsel. Laurence Levinson, Esquire, was thereafter appointed to represent Carr for the remainder of the pre-trial process and through trial.
10. Carr's trial was held in 1982, 37 years ago, and his direct appeal was decided in 1983, 36 years ago. Carr, who was facing six consecutive life sentences if convicted at trial, had conversations with his trial counsel about plea deals. In fact, we know that as a result of such conversations, Carr complained to the court about his counsel wanting him to admit his guilt and take a plea deal but that Carr was refusing to do so.
11. At this late date, Mr. Letang and Mr. Levinson are now both deceased. Had Carr raised this issue 36 years ago, counsel could have weighed in and revealed the full scope of the discussions they had with Carr about taking a plea. By Carr's delay in raising this issue for 36 years, Carr created the situation in which both of his trial counsel are now deceased and no longer able to weigh in and provide the court with a full account of the extent of their plea discussions.
12. Rule 61 mandates that in second or subsequent postconviction motions, the motion shall be summarily dismissed unless the defendant establishes: 1) that *new* evidence exists that creates a strong inference that the defendant is actually innocent of the charges for which he was convicted, or 2) the existence of a *new* rule of

constitutional law made retroactive to cases on collateral review rendered his convictions invalid.⁷ If it plainly appears from the motion for postconviction relief that the movant is not entitled to relief, the Court may enter an order for its summary dismissal and cause the movant to be notified.⁸

13. In this case, Carr has not pled with particularity that any *new* evidence exists that creates a strong inference that he is actually innocent of the charges for which he was convicted or that there is a *new* rule of law that would render his conviction invalid. In fact, in the subject motion, Carr is not contending that he is actually innocent of the charges for which he was convicted. He is contending only that he would now like to accept a plea for a lesser sentence.

14. Carr has failed to meet the pleading requirements allowing him to proceed with this Rule 61 motion. Carr has not provided new evidence establishing his actual innocence. Carr is admittedly guilty of the charges for which he was convicted.⁹ In accordance with the mandates of Rule 61, Carr's Rule 61 motion should be summarily dismissed.¹⁰

⁷ Super.Ct.Crim.R. 61(d)(2) & (5); and Rule 61(i).

⁸ Super.Ct.Crim.R. 61(d)(5).

⁹ See, Superior Court Docket No. 88, Petition for Modification of Sentence filed May 22, 1991, at pg. 3 (Reasons Why Carr's Sentence Should be Modified- "Petitioner has admitted his involvement in the offenses and expressed remorse.').

¹⁰ Super.Ct.Crim.R. 61(d)(2) & (5); and Rule 61(i).

15. Carr's motion also falls short of other procedural requirements that must be met in order to proceed with the merits of his claims. If a procedural bar exists, then the claim is barred and the court should not consider the merits of the claim.¹¹

16. Rule 61 (i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;¹² (2) any basis for relief must be asserted in the first timely filed motion for postconviction relief absent exceptional circumstances (ie. discovery of *new* evidence creating a strong inference of actual innocence or *new* rule of constitutional law rendering the conviction invalid) warranting a subsequent motion being filed; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules unless the movant shows prejudice to his rights and cause for relief; and (4) any basis for relief must not have been formally adjudicated in any proceeding. The bars to relief however do not apply to a claim that the court lacked jurisdiction or to a claim that new evidence exists that movant is actually innocent or that there is a new law, made retroactive, that would render the conviction invalid.¹³

17. In the subject action, Carr's motion is time-barred.¹⁴ In order to be timely filed, a Rule 61 motion must be filed within one year of a final order of conviction.¹⁵

¹¹ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹² Super.Ct.Crim.R. 61(i)(1).

¹³ Super.Ct.Crim.R. 61.

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

¹⁵ Super.Ct.Crim.R. 61(i)(1).

In this case, the final order of conviction was in 1983,¹⁶ and this motion was filed in August 2019, about 36 years later. This motion was filed well outside the applicable one-year limit. Carr's claim, at this late date, is time-barred.

18. As previously discussed, Rule 61(i)(2) further precludes this Court's consideration of Carr's motion since Carr has not satisfied the pleading requirements for proceeding with this motion. Carr has not established that *new* evidence exists creating a strong inference of his actual innocence or the existence of a *new* rule of constitutional law made retroactive to this case that would render his conviction invalid. Carr has raised nothing new which would establish a strong inference of his actual innocence. As previously stated, Carr admittedly committed the acts for which he was charged and convicted.

19. Rule 61(i)(3) also prevents this Court from considering any claim raised by Carr at this late date that had not previously been raised.

20. Carr had the information he needed to timely raise this issue. His co-defendant, charged with all the same offenses, had accepted a plea in 1982 before Carr proceeded to trial. It is logical to infer that Carr would have turned to his counsel and inquired as to why the plea had, or had not, been offered to him and discussions about the plea would have ensued. Both of Carr's trial counsel are now deceased so those discussions cannot now be brought to light. We do know that Carr

¹⁶ Super.Ct.Crim.R. 61(m)(2).


had plea discussions with his trial counsel and that, as he indicated in his contemporaneous letter to the court prior to trial, he was not interested in admitting guilt or accepting any plea.

21. Carr has not established any prejudice to his rights and/or cause for relief. There is no just reason for Carr's over 36-year delay in raising this issue. Any attempt at this late juncture to raise this claim is procedurally barred.

22. Carr has failed to meet the pleading requirements for proceeding with the subject motion and, therefore, this motion should be summarily dismissed. Carr's motion is also time-barred and otherwise procedurally barred.

For all of the foregoing reasons, Carr's Motion for Postconviction Relief should be **SUMMARILY DISMISSED**.

IT IS SO RECOMMENDED.



Commissioner Lynne M. Parker

cc: Prothonotary