

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DAVID M. WILLIAMS, )  
 )  
 Defendant. )  
 )

Cr. ID No. 9803018202B

Submitted: March 12, 2019

Decided: April 8, 2019

**COMMISSIONER'S REPORT AND RECOMMENDATION THAT  
DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF SHOULD  
BE DENIED  
AND  
MOTION FOR THE APPOINTMENT OF COUNSEL SHOULD BE  
DENIED.**

Zachary Rosen, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for the State.

David M. Williams, James T. Vaughn Correctional Center, Smyrna, Delaware,  
*pro se.*

PARKER, Commissioner

This 8th day of April 2019, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. On August 25, 1999, Defendant David M. Williams was convicted of two counts of Attempted Burglary Second Degree and other related charges. Before sentencing, the Superior Court granted the State's habitual offender petition with respect to both Attempted Burglary counts.

2. Under the habitual offender statute existing at the time of Williams' convictions and sentence,<sup>1</sup> Williams was facing a minimum-mandatory sentence of 16 years for the Attempted Burglary charges. At sentencing, on October 8, 1999, Williams was sentenced to 24 years for those charges, along with additional years of incarceration for the other charges for which he was not declared a habitual criminal.

3. As of March 2015, Williams had filed ten motions for postconviction relief pursuant to Rule 61.<sup>2</sup>

4. A new version of the habitual offender statute was enacted in 2016.<sup>3</sup> The new habitual offender statute permitted a defendant sentenced as a habitual

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<sup>1</sup> 11 *Del. C.* § 4214(a) (Supp. 1996).

<sup>2</sup> See, Superior Court Docket Nos. 153 & 155, *State v. Williams*, Criminal ID Nos. 9803018202B and 9803018202A, Del.Super., March 26, 2015, (Superior Court Memorandum Opinion and Order denying Williams' tenth motion for postconviction relief), *affirmed*, *Williams v. State*, No. 175, 2015 (Del. July 21, 2015).

<sup>3</sup> 80 Del.Laws c. 321 (2016); 81 Del. Laws, c. 6 (2017).

offender before July 19, 2016 to become eligible to petition the Superior Court for a sentence modification under certain circumstances under the newly enacted 11 *Del. C.* § 4214(f). A habitual offender sentenced before July 19, 2016 would be eligible to petition the Superior Court for a sentence modification if the defendant had received the minimum-mandatory sentence required to be imposed under the old version of the statute and additional conditions were also met.<sup>4</sup>

5. All requests for sentence modifications under the newly enacted 11 *Del. C.* § 4214(f) are governed by Superior Court Special Rule of Procedure 2017-1.

6. In 2017, Williams filed a Request for Certificate of Eligibility under the newly enacted 11 *Del. C.* § 4214(f). Williams' request was denied by the Superior Court on June 8, 2018.<sup>5</sup> Williams was determined not to be eligible for a sentence modification since his sentence under the habitual offender statute which existed at the time of his sentencing exceeded the minimum sentence mandated to be imposed.<sup>6</sup>

7. In denying his request for a certificate of eligibility, the Superior Court explained that Williams faced a 16-year minimum-mandatory sentence under the habitual offender statute which existed at the time he was sentenced. He faced a

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<sup>4</sup> See, 11 *Del. C.* § 4214(f).

<sup>5</sup> Superior Court Docket No. 186- Superior Court Order dated June 8, 2018 denying Williams' Request for a Certificate of Eligibility to file under 11 *Del. C.* § 4214(f).

<sup>6</sup> *Id.*

minimum sentence of 8 years for each of the two counts of the attempted burglary charges, for a minimum sentence of 16 years.<sup>7</sup>

8. In Williams' case, the sentencing judge chose to exceed the minimum sentence. The sentencing judge exercised his discretion and sentenced Williams to a total of 24 years, 12 years on each of the two counts of the attempted burglary charges. Because the sentencing judge exercised his discretion and exceeded the 16-year minimum mandatory sentence by an additional eight-years above that which was required, Williams was not eligible for sentence review under Section 4214(f).<sup>8</sup> Accordingly, the Superior Court denied Williams' Request for a Certificate of Eligibility.<sup>9</sup>

9. Apparently, Williams' counsel and other counsel in the Office of Defense Services have repeatedly explained to Williams that Section 4214(f) is inapplicable to his case because it was intended to provide relief only when the Superior Court sentenced the defendant to the minimum-mandatory sentence. By so doing, the question was left open that the Superior Court may have wanted to sentence the defendant to a lesser number of years but was prohibited from doing so by the minimum-mandatory sentence mandate.<sup>10</sup> Williams, however, was not

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Superior Court Docket No. 201- Affidavit of counsel in response to Williams' Rule 61 Motion.

in that category of defendants. Having been sentenced above the minimum-mandatory sentence required by the then-existing law, it was clear that the Superior Court had exercised its discretion in imposing his sentence. Under the circumstances of Williams case, Williams was not eligible for a sentence modification under 11 *Del. C.* § 4214(f).

10. On August 24, 2018, Williams filed the subject motion for postconviction relief seeking to challenge the Superior Court's denial of his Request for a Certificate of Eligibility and to contest his attorney's handling of that request on his behalf.

11. The record was enlarged to allow Williams' trial counsel to submit an Affidavit and the State to file a response to the motion.

12. Williams' Rule 61 motion must be denied. Superior Court Special Rule of Procedure 2017-1, the rule that governs all requests for sentence modifications under newly enacted 11 *Del. C.* § 4214(f), provides that a defendant may not file a motion for post-conviction relief in order to obtain, or challenge a denial of, a request for sentence modification under 11 *Del. C.* § 4214(f).<sup>11</sup>

13. Any objections to the denial of Williams' request for a certificate of eligibility should have been made by a motion for reconsideration of the Superior Court's June 8, 2018 Order denying the request or by appealing that decision to

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<sup>11</sup> Del.Super.Ct.Spec.R. 2017-1(a)(2).

the Delaware Supreme Court. Superior Court Criminal Rule 61 is not the proper vehicle to challenge the June 8, 2018 decision of the Superior Court denying Williams' request for a certificate of eligibility to file for a sentence modification under 11 *Del. C.* § 4214(f).<sup>12</sup>

14. Indeed, a Rule 61 motion is not the appropriate vehicle to seek, or challenge a denial of, a request for a sentence modification. When the relief sought is to attack the sentence imposed, not the underlying judgment of conviction, the court must summarily dismiss a Rule 61 motion.<sup>13</sup> Williams' claims in his pending Rule 61 motion are not cognizable under Rule 61.

15. Williams' request for the appointment of counsel is likewise denied. Since his Rule 61 motion is being summarily dismissed, his request for the appointment of counsel to assist with this Rule 61 motion is also denied.

For the reasons set forth herein, Williams' Rule 61 motion should be **SUMMARILY DISMISSED**. His denial of his request for a certificate of eligibility to file for a sentence modification under 11 *Del. C.* § 4214(f) cannot be challenged in a Rule 61 motion.

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<sup>12</sup> See, *Del.Super.Ct.Spec.R. 2017-1(a)(2)*.

<sup>13</sup> *Super.Ct.Crim.R. 61(a)(1); State v. Pearlman*, 2008 WL 3866193, at \*1 (*Del.Super.*), *aff'd*, 970 A.2d 257 (*Del.* 2009).

In light of the dismissal of his Rule 61 motion, Williams motion for the appointment of counsel is also DENIED.

**IT IS SO RECOMMENDED.**

  
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Commissioner Lynne M. Parker

cc: Prothonotary  
Timothy J. Weiler, Esquire