

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

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

Submitted: October 9, 2002
Decided: November 27, 2002

**On Defendant’s Third *Pro Se* Motion for Postconviction Relief.
SUMMARILY DISMISSED.**

ORDER

This 27th day of November, 2002, upon various documents filed by Christopher Desmond (the “Defendant”)¹ in support of his third *pro se* motion for postconviction relief, it appears to the Court that:

Defendant raises three grounds in this motion: 1) denial of his constitutional right to self-representation; 2) ineffective assistance of counsel; and 3) improper and suggestive photographic identification on the

¹ Defendant submitted: a “Motion for Rucusal [sic] of Trial Judge” (Dkt. #125); a Motion for Postconviction Relief (Dkt. #126); a “Petition to Address Procedural Bar Issues, in Support of Rule 61 and Memorandum” (Dkt. #129); a “Memorandum of Law in Support of Post-Conviction [sic] Rule 61 i,5 [sic]” (Dkt. #130); a “Petition to Address Procedural Bars/Motion for Recusal of Bias Judge Memorandum of Law” (Dkt. #128); a “Petition to Address Procedural Bar Issues, in Support of 61 Motion” (Dkt. #129); a “Memorandum of Law in Support of Postconviction Rule 61(i)(5)” (Dkt. #130); and an undocketed “Notice of Removal to Federal Court Pursuant to 28 U.S.C.A. § 1441 and 1443 [sic].”

part of the police. All three claims were previously ruled upon by this Court in Defendant's first motion for postconviction relief (State v. Desmond, ID ##91009844DI, 1995 WL 717628 (Del. Super. Nov. 16, 1995), aff'd, Del. Supr., No. 487, 1995, Berger, J. (Mar. 8, 1996) (ORDER)), and again in Defendant's second motion for postconviction relief (State v. Desmond, Del. Super., ID #91009844DI, Cooch, J. (Dec. 4, 2000), aff'd, Del. Supr., No. 5, 2001, Berger, J. (Mar. 8, 2001) (ORDER)). In an effort to avoid those earlier rulings, Defendant now argues that the "fundamental fairness" exception contained in Superior Court Criminal Rule 61(i)(5) applies and also that this judge cannot entertain the current motion because of "bias" due to this judge's earlier rulings.

However, the "fundamental fairness" exception contained within Rule 61(i)(5) does not apply here because Defendant's claims are procedurally barred under the "former adjudication" bar of Superior Court Criminal Rule 61(i)(4) and Defendant does not qualify for the "interest of justice" exception to that rule; that exception has been "narrowly defined to require the movant to show that the trial court lacked the authority to convict or punish him." State v. Wright, 653 A.2d 288, 298 (Del. Super. Ct. 1994) (citing Flamer v. State, 585 A.2d 736, 746 (Del. 1990)). Relatedly, this Court, after finding that Defendant was legally detained, earlier denied a

Petition for a Writ of Habeas Corpus that Defendant had filed, In the Matter of the Petition of Christopher R. Desmond for a Writ of Habeas Corpus, Del. Super., C.A. No. 01M-06-055, Cooch, J. (July 2, 2001) (ORDER), and the Supreme Court affirmed, Desmond v. Snyder, No. 341, 2001, 2001 WL 1750957 (Del. Supr. Oct. 16, 2001).²

Before affirming this Court's denial of the petition for the writ, the Supreme Court noted that Defendant had claimed on appeal that he was entitled to habeas relief in part because of this judge's claimed "bias at trial [which] deprived...[Defendant] of due process." Id., at *1. By thereafter ruling that Defendant's appeal was without merit, the Supreme Court (at least) implicitly found that this judge was not biased such that he cannot now consider the current motion for postconviction relief. Accordingly, that part of the motion that seeks disqualification of this judge is without merit and is now also subject to the "former adjudication" bar of Superior Court Criminal Rule 61(i)(4).

² Defendant also filed a federal petition for a writ of habeas corpus, which petition was denied. Desmond v. Snyder, No. CIV.A.96-327-GMS, 1999 WL 33220036 (D. Del. Nov. 16, 1999). Defendant appealed the district court's ruling, but the Court of Appeals for the Third Circuit refused to hear the appeal when it "denied mandamus." In re Desmond, 205 F.3d 1328 (3d Cir. 1999) (Table). The United States Supreme Court thereafter denied Defendant's petition for a writ of certiorari. Desmond v. Snyder, 532 U.S. 945 (2001) (Mem.).

Because all of Defendant's claims have previously been ruled upon and because Defendant cannot demonstrate exception to the procedural bars of Superior Court Criminal Rule 61(i), his third *pro se* motion for postconviction relief is **SUMMARILY DISMISSED** pursuant to Rule 61(d)(4).

IT IS SO ORDERED.

Richard R. Cooch, J.

oc: Prothonotary
xc: Steven P. Wood, Esquire, Deputy Attorney General
Christopher Desmond
Investigative Services