

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

STATE OF DELAWARE)	
)	
v.)	ID: 88001884DI
)	
VICKY CHAO)	
)	

Date Submitted: September 25, 2002
Date Decided: October 22, 2002

*Upon Defendant's Motion for Transcripts: **DENIED.***

ORDER

1. On September 25, 2002, Vicky Chao ("Defendant"), filed a *pro se* request for transcripts from her evidentiary hearing held in 1993 and transcripts from her second trial in 1995 to be provided at the expense of the State. Defendant also requested that counsel be appointed to assist her with legal issues "pursuant to Supreme Court Rule 26."

2. Defendant filed a Motion for Postconviction Relief on May 22, 2002, asserting four claims upon which relief could have been granted including violation of her Fourth Amendment rights and specific allegations of ineffective assistance of counsel. On August 22, 2002, Defendant's motion for postconviction relief was denied.¹ The court held that two of Defendant's claims were procedurally barred pursuant to Rule 61(i)(4).² In addition, Defendant's ineffective assistance of counsel claims failed to meet the standard established in *Strickland*.³

3. In Defendant's instant request for transcripts, she has not stated how these transcripts

¹See *State v. Chao*, 2002 WL 31007908 (Del. Super.).

²*Id.* Del. Super. Ct. Rule 61(i)(4).

³See *Chao* at 3. See also *Strickland v. Washington*, 466 U.S. 668 (1984).

will assist her with her defense. Defendant has failed to identify any fundamental rights that were allegedly violated or a set of facts upon which relief might be granted.

3. “*Doran and Bordley* make clear that when the defendant offers no factual basis and fails to clearly identify the fundamental rights that were violated, the Court will find the defendant’s claim ‘frivolous’ and deny the motion.”⁴

4. Defendant has not made the showing required for this Court to find that her transcripts are “needed to decide the issue.”⁵ Defendant has failed to establish sufficient and specific reasons for his need for the production of this transcript at the State’s expense.⁶

5. Defendant’s request for appointment of counsel pursuant to Supreme Court Rule 26 is also without merit. Rule 26(b) states that, “In appeals from rulings made under Superior Court Criminal Rule 61 or other post-conviction rulings of a trial court, the Court may in its discretion appoint counsel for an indigent defendant or child.”⁷ A defendant does not have a Sixth Amendment right to court-appointed counsel in post-conviction relief proceedings.⁸ The Superior Court has broad discretion in deciding whether to appoint counsel for a defendant in such collateral proceedings.⁹ Defendant has not appealed this court’s ruling on her post-conviction relief motion and has not filed any subsequent motions that would trigger the Rule 26

⁴*State v. Boardley*, Del.Super., Nos. IN90-02-0233, IN90-02-0234, Barron, J. (Nov. 6, 1992) (ORDER).

⁵*United States v. MacCollom*, 426 U.S. 317, 330 (1976).

⁶*Bratcher v. State*, Del. Supr., No. 331, 1998, Veasey, C.J. (Nov. 10, 1998).

⁷Supr. Ct. R. 26(b).

⁸*Ross v. Moffitt*, 417 U.S. 600, 601 (1974).

⁹*Carr v. State*, 520 A.2d. 1044 (Del. Super. Ct. 1987).

discretionary appointment of counsel.

Accordingly, Defendant's Motion for a transcript at the expense of the State and request for appointment of counsel is hereby **DENIED**.

IT IS SO ORDERED.

The Honorable Richard S. Gebelein

Orig: Prothonotary
cc: Vicky Chao - BWCI