

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE)	
)	
v.)	
)	IK96-05-0278-R1
ROBERT E. EATON,)	
)	
Defendant.)	
ID No. 9605007019)	

Submitted: May 16, 2002
Decided: June 3, 2002

ORDER

Upon consideration of the defendant's Motion for Postconviction Relief, the Commissioner's Report and Recommendation and the record in this case, it appears that:

(1) The defendant, Robert E. Eaton ("Eaton") was found guilty by a jury on July 3, 1996 of one count of Noncompliance with Conditions of Bond, 11 *Del. C.* § 2113(c). A timely notice of appeal was filed with the Delaware Supreme Court. In his appeal, Eaton raised three arguments. The Supreme Court on December 8, 1997 affirmed Eaton's conviction and sentence.¹ The mandate from the Supreme Court issued on December 24, 1997.

¹ *Eaton v. State*, 703 A.2d 637 (Del. 1997).

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Next, Eaton filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61. In his motion, Eaton argues that one of the police officers during trial testified untruthfully concerning Eaton's criminal history.

(2) The Court referred this motion to Superior Court Commissioner Andrea M. Freud pursuant to 10 *Del. C.* § 512(b) and Superior Court Criminal Rule 62 for proposed findings of facts and conclusions of law. The Commissioner has filed a Report and Recommendation concluding that the motion for postconviction relief should be dismissed as procedurally barred by Rules 61(i)(1) and (3) as time barred and for a failure to demonstrate cause and prejudice.

(3) No objections to the Report have been filed.

NOW THEREFORE, after careful and *de novo* review of the record in this action, and for the reasons stated in the Commissioner's Report and Recommendation dated May 1, 2002,

IT IS ORDERED that:

(A) The Commissioner's Report and Recommendation is adopted by the Court;

(B) The defendant's Motion for Postconviction Relief is ***DISMISSED***.

/s/ Henry duPont Ridgely
President Judge

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cmh

oc: Prothonotary

xc: Hon. Andrea M. Freud

John R. Garey, Esq.

Mr. Robert E. Eaton

Order Distribution (w/Report & Recommendation)

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John R. Garey, Esq., Deputy Attorney General, Dover, Delaware, for the State of Delaware.

Robert E. Eaton, *pro se*

COMMISSIONER'S REPORT AND RECOMMENDATION

**Upon Defendant's Motion For Postconviction Relief
Pursuant to Superior Court Criminal Rule 61**

FREUD, Commissioner
May 1, 2002

On July 3, 1996 Defendant Robert E. Eaton (“Eaton”) was found guilty by a jury of one count of Noncompliance with Conditions of Bond, 11 *Del. C.* § 2113(c). A timely notice of appeal was filed with the State Supreme Court. In his appeal, Eaton raised three arguments. The Supreme Court on December 8, 1997

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affirmed Eaton's conviction and sentence.² The mandate from the Supreme Court issued on December 24, 1997.

Eaton filed the pending motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on May 7, 2001. In his motion, Eaton argues that one of the police officers during trial testified untruthfully concerning Eaton's criminal history.

Under Delaware law, the Court must first determine whether Eaton has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of his postconviction relief claims.³ Under Rule 61 postconviction claims for relief must be brought within three years of the conviction becoming final.⁴ The pending motion was filed more than three years after the dismissal of Eaton's direct appeal and is therefore procedurally barred under Rule 61(i)(1) unless he asserts a retroactively applicable right that is newly recognized after the judgment of conviction. He has not alleged such a right.

None of Eaton's grounds for relief were raised on direct appeal or at trial. Grounds for relief not asserted in the proceedings leading to judgment of conviction are thereafter barred unless the movant demonstrates: 1) cause for the

² *Eaton v. State*, 703 A.2d 637 (Del. 1997).

³ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) (citing *Harris v. Reed*, 489 U.S. 255 (1989)).

⁴ Super. Ct. Crim. R. 61(i)(1).

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procedural fault; and 2) prejudice from a violation of the movant's rights.⁵ The bars to relief are inapplicable to a jurisdictional challenge or to a colorable claim of miscarriage of justice stemming from a constitutional violation that undermines “the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”⁶ Eaton has not alleged any reason for his failure to have raised these issues sooner nor has he made any concrete allegations of prejudice. These failures are fatal to his motion.

I confidently recommend that Eaton’s postconviction motion be dismissed as procedurally barred by Rules 61(i)(1) and (3) as time barred and for a failure to demonstrate cause and prejudice.

/s/ Andrea Maybee Freud

Commissioner Andrea Maybee Freud

cmh

oc: Prothonotary

xc: Hon. Henry duPont Ridgely

John R. Garey, Esq.

Robert E. Eaton

Notebook

⁵ Super. Ct. Crim. R. 61(i)(3).

⁶ Super. Ct. Crim. R. 61(i)(5).