

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

STATE OF DELAWARE	)	
	)	I.D. No. 90004877DI
v.	)	Cr. A. No. IN90-05-1162R1
	)	IN90-05-1163R1
CALVIN M. HAMMOND,	)	IN90-05-1164R1
Defendant.	)	

Submitted: May 8, 2002  
Decided: May 24, 2002

UPON DEFENDANT'S MOTION FOR  
POSTCONVICTION RELIEF. SUMMARILY DISMISSED.

This 24th day of May, 2002, upon consideration of Defendant's Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 and the record in this case, it appears to the Court that:

(1) Following a jury trial, Defendant, Calvin Hammond, was found guilty of First Degree Unlawful Sexual Intercourse and two counts of Third Degree Unlawful Sexual Intercourse. On March 1, 1991, Hammond was sentenced to life imprisonment for the first degree unlawful sexual intercourse charge, eight years imprisonment on the first count of third degree unlawful sexual intercourse charge and seven years imprisonment on the second count of third degree sexual

intercourse charge. Hammond timely filed an appeal to the Delaware Supreme Court. On March 26, 1992, the Supreme Court issued its mandate affirming Defendant's conviction.<sup>1</sup>

(2) On April 23, 2002, Hammond filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61. Under Delaware law, the Court must first determine whether Hammond has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of the postconviction relief claims.<sup>2</sup> The Court finds that Defendant's motion is procedurally barred under Rule 61(i)(1).

(3) Under Rule 61, postconviction claims for relief must be brought within three years of the conviction becoming final. As set forth above, Defendant's conviction became final on March 6, 1992, over ten years ago.

(4) The Court finds that Defendant has not shown that the procedural time bar is inapplicable under Rule 61(i)(5). Subsection (i)(5) provides an exception to the time bar set forth in subsection (i)(1) where there is a claim that "the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of

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<sup>1</sup> *Hammond v. State*, Del. Supr., No. 112, 1991, Walsh, J. (Mar. 6, 1992)(ORDER).

<sup>2</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

conviction.” The exception is narrow “and has only been applied in limited circumstances, such as when the right relied upon has been recognized for the first time after the direct appeal.”<sup>3</sup>

(5) In support of his motion for postconviction relief, Hammond claims that he had a protected liberty interest under the Protection From Abuse Act (hereafter “PFA statute”).<sup>4</sup> Hammond further argues that the Court lacked jurisdiction, that there was a miscarriage of justice, and that he was denied his right to procedural due process and equal protection under the law. In an attempt to thwart dismissal of his motion as untimely, Hammond claims that the delay in raising these grounds was the result of ineffective assistance of counsel.

(6) A criminal defendant who raises an allegation of ineffective assistance of counsel must show that the attorney’s conduct did not meet reasonable professional standards so that such conduct was prejudicial to the defendant.<sup>5</sup> A defendant must be able to show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.”<sup>6</sup>

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<sup>3</sup> *Id.* at 555.

<sup>4</sup> DEL. C. ANN. tit. 10 §1041, *et. seq.* (1999).

<sup>5</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

<sup>6</sup> *Id.* at 669.

(7) Defendant does not allege, and has failed to provide any evidence, that there were meritorious issues which could have been raised in his direct appeal or that his conviction would have been reversed by the Supreme Court if those issues had been raised.

(8) Defendant's argument that he is entitled to the protections of the Protection from Abuse Act is not only patently frivolous but offensive in light of the charges for which he was convicted. The PFA statute is intended to provide a civil remedy to family members, living spouses, or individuals who have a child in common from abusive, violent, harassing or threatening behavior by other members of the family, former family or household. In short, it is intended to protect individuals against domestic violence. To suggest that Hammond was somehow entitled to a civil protective order against a fifteen year old victim of sexual offenses perpetrated by him is a repugnant and unprecedented reading of the statute.

(9) Moreover, the Court is aware that this motion is one of a dozen or so verbatim motions that have been filed by numerous defendants.<sup>7</sup> These motions have been assigned to various judges in this Court. None of these "cookie-cutter" motions, obviously prepared by one individual at the prison and copied by others, specifically address the facts of each individual defendant's case, nor do they

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<sup>7</sup> See *State v. Torres*, Del. Super., I.D. No. 30101192DI, Ableman, J. (May 24, 2002)(ORDER).

appear to have been prepared by the individual defendants who separately signed the copies. Not only is this photocopied “form” motion frivolous and baseless on the merits, but it represents an abuse of the Court’s processes and should be summarily dismissed.

(10) Hammond has utterly failed to raise “a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”

Accordingly, Hammond’s Motion for Postconviction Relief is  
SUMMARILY DISMISSED.

**IT IS SO ORDERED.**

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Peggy L. Ableman, Judge

oc: Prothonotary  
cc: Calvin M. Hammond