

March 4, 2002

Gregory S. Phillips
Sussex Correctional Institution
P.O. Box 500
Georgetown, DE 19947

RE: State of Delaware v. Gregory S. Phillips
Def. ID #9612002787
Motion for Post Conviction Relief (R-2)

Dear Mr. Phillips:

This is the Court's decision denying your recent application for Motion for Post Conviction Relief under Superior Court Rule 61.

On March 2, 2001, this Court found you in violation of probation. You were sentenced to Level 5 incarceration, which would be suspended upon successful completion of the Key Program. At that time you would be flowed down to the Crest Program, and upon successful completion of the Crest Program, you would receive Level 3 probation. You appealed to the Delaware Supreme Court. On February 11, 2002, Supreme Court affirmed this Court's March 2, 2001, order. Gregory Phillips v. State, Del.Supr., No. 132, 2001, Berger, J. (Feb. 11, 2002) (ORDER)

Three days later you filed the present Motion for Post Conviction Relief, attacking the probation proceedings as double jeopardy; a breach of your original Rule 11 plea agreement; illegal in that you were not serving all of the probation sentences on which you were re-sentenced; that the Court abused discretion in sentencing you because you weren't really guilty of the original offense; and that in general, there had been a miscarriage of justice.

I find that your present application for post conviction relief concerning the violation of probation sentence is procedurally barred. All of these issues could have been raised at your violation of probation hearing or on your direct appeal to Supreme Court, together with the seven issues you included in that appeal. Therefore you had the requirement under Rule 61(i) to explain cause, or the reason why you did not present these issues to Superior Court or Supreme Court. You have not done so. Rule 61(i)(3) also requires that you show prejudice from a violation of your movant's right. I find that there can be no prejudice because the claims have no

merit.

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You claim that you are entitled to withdraw from the plea bargain due to a broken plea agreement because the violation of probation sentence is contrary to the Rule 11(e)(1)(c) plea. This is a frivolous claim. You received the Rule 11(e)(1)(c) plea sentence, but subsequently violated your probation. Rule 11(e)(1)(c) does not diminish the Court's authority to impose a sentence if you violate your probation.

Likewise, your claim that there is a violation of double jeopardy because the reimposition of a sentence punishes you twice is frivolous. The sentence imposed was that portion of the earlier sentence that was suspended.

When an individual has consecutive probations and is serving the first probation but then violates probation, he violates all the probationary sentences. Your claim that you can only be violated for the probation that you were then serving has no merit.

The balance of your arguments don't go to the violation of probation, but go to your position as to whether or not you should be sentenced at all, because you feel you were truly not guilty and should be allowed to withdraw your guilty plea. These claims do not give rise to any prejudice arising out of the violation of probation hearing. For the reasons afore-stated, you have not established prejudice under Rule 61(3).

Having shown neither cause for relief nor prejudice, your claims are procedurally barred, and your Motion for Post Conviction Relief is denied. SO ORDERED.

Finally, I note that you have refused to enter the Key Program. That's your choice, but you are only making the sentence longer than it need be.

Very truly yours,

T. Henley Graves

pc: Prothonotary
Department of Justice