

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

STATE OF DELAWARE)	
)	
v.)	ID# 9812012383
)	
THOMAS COOPER,)	
)	
Defendant.)	

Submitted: September 28, 2001
Decided: December 20, 2001

ORDER

On Defendant's *Pro Se* Motion for Postconviction Relief. Denied.

James Rambo, Deputy Attorney General, Department of Justice, Wilmington, Delaware. Attorney for the State.

Thomas Cooper, Sussex Correctional Institution, Georgetown, Delaware. *Pro Se* Defendant.

CARPENTER, J.

On this 20th day of December, 2001, upon consideration of the defendant's *pro se* Motion for Postconviction Relief, and the State's response, it appears to this Court that:

1. On May 1, 2001, Thomas Cooper (hereinafter "the defendant") filed a Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. At the Court's request the State filed a response on September 28, 2001. For the reasons set forth below, the defendant's Motion for Postconviction Relief is denied as to claims one and two, and summarily dismissed, as to claims three and four.

2. After a jury trial, the defendant was convicted of possession with intent to deliver cocaine, possession within 1000 feet of a school, and second degree conspiracy. On November 19, 1999, the defendant received the minimum mandatory sentence of fifteen years at Level 5, followed by six months at Level 4 and one year at Level 3. Thereafter, the defendant filed a direct appeal to the Supreme Court of Delaware, alleging that two errors occurred during his trial. First, the defendant claimed that the Superior Court gave an improper jury instruction concerning constructive possession, and secondly, that the Court erroneously refused to grant him a motion to dismiss at the conclusion of the State's case.¹ In its decision, the Supreme Court noted that the defendant "specifically accepted the [Superior] Court's

¹ *Cooper v. State*, Del. Supr., No. 607, 2000, Walsh, J. (December 19, 2000)(ORDER).

instruction on possession, which was fashioned to accommodate [the defendant]’s concern,” and that “any objection to the correctness of that instruction was deemed waived.”² The Court further held that the Superior Court’s denial of the defendant’s motion to dismiss the State’s case was not in error. Specifically, the Supreme Court stated that the inferences at that juncture of the State’s case, were sufficient to support its case against the defendant. Thus, the Court affirmed the defendant’s convictions. Thereafter, the defendant filed this motion for postconviction relief, in essence asserting four grounds for relief.

The defendant first claims “procedural default” stating that the jury was given “out-dated” instructions, which tainted the outcome of his trial. Next, the defendant asserts that there was inconsistent testimony given by the State’s witnesses, which the defendant claims “clearly showed a reasonable doubt” that “the verdict is against the evidence.” Third, the defendant asserts that his conviction was based on false testimony and alternatively that the State’s witnesses gave testimony that favored the defendant. Lastly, the defendant claims ineffective assistance of counsel, asserting that his attorney’s representation fell below an objective standard of reasonableness, and that because of his attorney’s unprofessional errors, the defendant’s trial results would have been different.

² *Id.*

3. Before addressing the merits of any claim raised in a motion seeking postconviction relief, this Court must first apply the rules governing the procedural requirements of Super. Ct. Crim. R. 61.³ Rule 61(i)(4) provides that “[a]ny ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice. Here, the defendant’s motion for postconviction relief asserts two grounds, which were previously raised on direct appeal to the Supreme Court of Delaware. These claims were addressed and ruled upon by that Court, and this Court finds that the defendant’s assertions are not sufficient to merit revisiting them under the interest of justice exception. It is well settled law in Delaware that the “interest of justice” exception requires that the defendant show that subsequent legal developments have revealed that the trial court lacked authority to convict or punish him.⁴ The defendant has not asserted a claim that the trial court lacked authority to convict or punish him, but instead merely contends in a conclusory

³*Bailey v. State*, Del. Supr., 588 A.2d 1121, 1127 (1991); *Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990) (citing *Harris v. Reed*, 489 U.S. 255, 265 (1989)).

⁴*Flamer v. State*, Del. Supr., 585 A.2d 736, 746 (1990). *State v. Wright*, Del. Super., 653 A.2d 288, 298 (1994)

manner that the jury was given outdated instructions on the law, which affected the outcome of his trial. Similarly, under his second claim, the defendant simply asserts that the State's witnesses gave conflicting testimony. Therefore, his first and second claims are procedurally barred, and this Court will not consider these claims on their merits.

4. The defendant has also asserted two other claims, which were not raised in his direct appeal, but are nonetheless stated in a conclusory manner. These claims offer no specific, supporting facts to sustain the defendant's mere assertions. Superior Court Criminal Rule 61(d)(4) provides that "[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified."⁵ Claims for postconviction relief, which are entirely conclusory may be summarily dismissed on that basis.⁶

⁵ Super. Ct. Crim. R. 61(d)(4).

⁶ See e.g., *State v. Brittingham*, Del. Super., Cr. A. No. IN 91-01-1009, Barron, J.(Dec. 29, 1994)(Order) at 3 (citing *Younger v. State*, 580 A.2d 552, 556 (1990)(holding that conclusory allegations are legally insufficient to prove ineffective assistance of counsel); *Jordan v. State*, Del. Super., No. 270, 1994 Walsh, J. (Aug. 25, 1994)(ORDER)).

Here, the defendant has merely stated under his third claim that “the conviction in question was based on false testimonies, and the State’s witness testimony was in favor of the defendant.” The defendant has not offered supporting facts for this Court to consider his claim. Moreover, his fourth “ineffective assistance of counsel claim” again simply states in a conclusory manner, that his attorney’s representation fell below an objective standard of reasonableness. This ineffective assistance of counsel claim fails to detail, with any degree of specificity, what error, if any, counsel committed at trial. Instead, it is a blanket criticism without any factual support.

5. For the reasons set forth above, the defendant’s motion for postconviction relief is procedurally barred as to claims one and two, and these claims are therefore **DENIED**. As to the defendant’s third and fourth claims, this Court finds that they are unsupported, conclusory allegations, which are **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.