

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

STATE OF DELAWARE)
)
)
 v.) I.D. No. 9909009716
)
DARREN L. ADAMS,)
)
 Defendant.)
)

Submitted: September 26, 2001
Decided: September 28, 2001

ORDER

Upon Defendant's Motion for Postconviction Relief.

Summarily Dismissed.

This 28th day of September, 2001, upon consideration of the defendant's motion for postconviction relief pursuant to Superior Court Criminal Rule 61 and the record in this case, it appears that:

(1) On February 3, 2000, Defendant, Darren Adams, pleaded guilty to Criminal Trespassing, First Degree, Possession of Marijuana, and Resisting Arrest. The Court sentenced Defendant to a total of two and one half years Level 5 incarceration, all of which was suspended for Level 3 and Level 2 probation. The Court subsequently adjudged

Defendant guilty of violating the terms of his probation on July 19, 2000, August 11, 2000, and August 23, 2000. For his third violation of probation, the Court sentenced Defendant to two years, six months Level 5 incarceration, suspended upon successful completion of the Key program for Level 3 probation.

(2) Defendant has now filed a Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. Defendant lists as grounds for relief in his petition ineffective assistance of counsel and “character assessment.” Under established procedure, the Court must first determine whether Defendant has met the procedural requirements of Superior Court Criminal Rule 61(i) before the Court may consider the merits of the postconviction relief claims. *Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990). This is Defendant’s first motion for postconviction relief and the Court determines that none of the procedural bars listed in Rule 61(i) are applicable. Therefore, the Court may consider the merits of Defendant’s motion.

(3) The Court notes, however, that Defendant’s motion appears to encompass all three violation of probation proceedings in his first ground for relief. However, Rule 61(b)(3) specifies that a motion “shall be limited to the assertion of a claim against one judgment of conviction.” In addition, Defendant is not in custody or subject to future custody for the first two violations, as they were revoked due to the subsequent violations. Therefore, the Court will concern itself only with the August 23, 2000 proceedings.

(4) Defendant’s first ground for relief is ineffective assistance of counsel.

Defendant claims that the Public Defender failed to discuss the merits of his case with him prior to the hearing, failed to inform Defendant of his right to appeal, and failed to put an “explanatory letter” in his file.

(5) A defendant does not have an absolute constitutional right to counsel at a violation of probation hearing. *Jones v. State*, Del. Supr., 560 A.2d 1056, 1057 (1989).

Rather, a defendant is entitled to representation only when, in part, Defendant can raise:

“[A] timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested there are no substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present.”

Id. at 1058 (quoting *Gagnon v. Scarpell*, 411 U.S. 778, 790 (1973)). In the instant case, Defendant did not contest the violation of probation, nor did Defendant show that there were “substantial reasons which justified or mitigated the violation.” There is nothing in the record to show that Defendant presented any complex or difficult claims at the hearing. As a result, Defendant is precluded from raising an ineffective assistance of counsel claim in his motion. *Doran v. State*, Del. Supr., No. 233, 1991, Moore, J. (Aug. 15, 1991)(ORDER).

(6) Defendant’s second ground for relief is “character assessment.” Defendant states, in part, “[a]dmittedly, the movant realizes that he should not have taken either prescription drug. Although, it is important that the movant notes to the court that he was not out using street drugs.” Defendant argues that, “this goes to an improper character assessment by his probation officer.” The Court finds that Defendant’s second ground for

relief falls outside the scope of Rule 61, which provides for grounds, “that the court lacked jurisdiction or on any other ground that is a sufficient factual and legal basis for a collateral attack upon a criminal conviction. . . .” Defendant’s statements do not allege any facts concerning his conviction. Rather, they appear to be an argument in support of a motion for sentence reduction.

Therefore, because the Court finds that it is plain from the Motion for Postconviction Relief and the record in this case that Defendant is not entitled to relief, the motion is hereby **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

Carl Goldstein, Judge

oc: Prothonotary
pc: Darren L. Adams