

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

STATE OF DELAWARE	:
	:
v.	: Criminal I.D. 9901012257
	: Criminal Action No.
FLOYD T. WRIGHT,	: IN 99-02-0351 R1 and
	: 99-02-0352 R1
Defendant.	:

Upon Defendant's Motion for Postconviction Relief – DENIED

Submitted: May 24, 2001

Decided: June 5, 2001

ORDER

DEL PESCO, Judge

This 5th day of June 2001, upon consideration of defendant's Motion for Postconviction Relief, it appears to this Court that:

1) On February 16, 1999, the Grand Jury returned two count indictment against defendant, Floyd T. Wright ("Wright"), charging him with one felony count of Robbery First Degree¹ and one felony count of Assault Second Degree.²

¹ 11 Del. C. § 832.

² 11 Del. C. § 612(a)(1).

2) On May 25, 1999, Wright, represented by counsel, entered a Robinson plea to both charges after his request for a continuance of the trial was denied.³ The agreement also indicated that it was not drawn pursuant to Super. Ct. Crim. R. 11(e)(1)(C),⁴ and that the State could recommend Wright serve up to 28 years incarceration. Wright signed the agreement after indicating that he had not been coerced into entering the plea, and that he had not been promised anything that was not stated in the written plea agreement.

3) At the May 25, 1999 plea colloquy proceedings, Wright was given an opportunity to review the plea agreement with his attorney. As a result of the serious nature of the crimes to which defendant was about to plead, the Court exercised particular caution during the plea colloquy and extensively reviewed with the defendant the consequences of this entry of a Robinson plea. During this colloquy, Wright indicated that he had read the plea form and the plea agreement, had discussed them with his attorney, understood what the papers stated, and had signed them. The Court confirmed that the defendant understood that by entering a Robinson plea, he was giving up the right to be presumed innocent, the right to a speedy and public trial, the right to trial by jury, the right to hear and question the witnesses against him, the right to present evidence in his defense, the right to testify or not testify, and the right to appeal as to anything except the legality of his

³ TR. at 21, 33-49. (References to the May 25, 1999 Plea Colloquy transcript will hereinafter be cited as TR. at ____.)

⁴ This rule provides: "(1) In general. The attorney general and the attorney for the defendant . . . may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty . . . to a charged offense . . ., the attorney general will . . .: (C) Agree that a specific sentence is the appropriate disposition of the case. The prosecuting attorney shall comply with 11 *Del. C.* § 5106."

⁵ TR. at 33-49.

⁶ TR. at 41-42.

sentence. When asked if he understood, Wright responded affirmatively. In closing, the Court advised Wright if he had any concerns about his Robinson plea, he should raise them immediately because once his plea was accepted, he could not have it set aside. Wright stated that he understood and entered his plea.

4) On August 6, 1999, after reviewing the defendant's presentence report, the Court sentenced Wright on the first count to ten years imprisonment at Level V. On the second count, the Court sentenced Wright to eight years imprisonment at Level V, to be suspended after five years for three years at Level IV, to be suspended after one year for two years at Level III. All Level V incarceration must be served consecutively.

5) On August 9, 2000, Wright filed a Motion for Postconviction Relief under Rule 61 in an apparent attempt to withdraw his Robinson plea under a claim of "prejudice amounting to manifest injustice." After reviewing the motion, the Court determined that the substance of Wright's petition had been borrowed from another case and bore no relationship to the transcript of the May 25, 1999 plea colloquy. The Court also noted that Wright's additional hand-written pages set forth essentially the same objections that he had prior to the date of trial and during the in-court conversations with regard to his Robinson plea. The Court concluded that since Wright's motion failed to articulate a coherent objection to the quality of

⁷ TR. at 43.

⁸ TR. at 44.

⁹ TR. at 48-49.

¹⁰ *Allen v. State*, Del. Supr., 509 A.2d 87, 88 (1986).

his representation, there was nothing for the Court to analyze and no basis on which to grant the motion.

6) On October 4, 2000, Wright submitted an appeal to the Delaware Supreme Court from this Court's denial of his motion for postconviction relief. The Supreme Court considered and rejected Wright's claims that his counsel provided ineffective assistance, or that this Court abused its discretion in refusing to grant a continuance of his trial so he could obtain substitute counsel, and that his Robinson plea was involuntary. The Supreme Court affirmed the denial of the motion for postconviction relief, stating that they found no merit to his appeal. In addition, the Supreme Court concluded there was no support for Wright's claim of ineffective assistance of counsel in that this Court did not abuse its discretion in denying a continuance of his trial. The Supreme Court also concluded that Wright knowingly and voluntarily entered his Robinson plea.

7) Wright has now once again moved this Court for postconviction relief under Superior Court Criminal Rule 61. He asserts two separate grounds for relief, both of which are variations on the theme that this Court abused its discretion in his case. Under his first ground for relief, Wright asserts this Court abused its discretion when it denied his request to continue his trial so he could obtain substitute counsel. Wright's second ground for relief contends this Court abused its discretion when it denied his "right" to withdraw his Robinson plea within 30 days.

8) Under Delaware law, in order for this Court to consider the merits of

¹¹ *State v. Wright*, Del. Super., Cr.A. Nos. IN99-02-0351 and IN99-02-0352, Del Pesco, J. (Sept. 8, 2000)(ORDER).

¹² *Wright v. State*, Del. Supr., No. 482, 2000, Holland, J. (Feb. 28, 2001)(ORDER).

a motion for postconviction relief, the movant must first overcome the substantial procedural bars contained in Rule 61(i). Under Rule 61, postconviction claims for relief must be brought within three years of the movant's conviction becoming final.

Further, any ground for relief previously adjudicated is thereafter barred, unless consideration of the claim is necessary in the interest of justice.

9) With respect to both of his claims of abuse of discretion, Wright raised similar challenges to the Supreme Court in his appeal of this Court's denial of his first motion for postconviction relief. Both of his claims were rejected. This Court is not required to reconsider these previously adjudicated claims simply because they are "refined or restated." In order to overcome the procedural bar of Rule 61(i)(4), a movant must establish that reconsideration of previously adjudicated claims is warranted in the "interest of justice." The Supreme Court has defined "interest of justice" to require a showing that "subsequent legal developments have revealed that the trial court lacked the authority to convict or punish" the accused. Wright has made no attempt to satisfy this requirement. Consequently, these claims are procedurally barred and Wright's Motion for Postconviction Relief is DENIED.

IT IS SO ORDERED.

¹³ *Flamer v. State*, Del. Supr., 585 A.2d 736, 745 (1990); *Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990).

¹⁴ Super. Ct. Crim. R. 61(i)(1).

¹⁵ Super. Ct. Crim. R. 61(i)(2).

¹⁶ *Cruz v. State*, Del. Supr., 676 A.2d 901, 1996 WL 21060, *1, Holland, J. (Jan. 10, 1996)(ORDER).

¹⁷ Super. Ct. Crim. R. 61(i)(4).

¹⁸ *Cruz v. State*, Del. Supr., 676 A.2d 901, 1996 WL 21060, *2, Holland, J. (Jan. 10, 1996) (ORDER) (citing to *Flamer v. State*, Del. Supr., 585 A.2d 736, 746 (1990)).

Judge Susan C. Del Pesco

Original to Prothonotary

xc: Floyd T. Wright, Delaware Correctional Center