

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

<b>STATE OF DELAWARE</b>	)	
	)	
v.	)	
	)	<b>I.D. # 9809021900</b>
<b>JUSTO L. MORALES, Movant</b>	)	
<b>DOB: 01/03/1962</b>	)	
	)	

**Date submitted: October 31, 2000  
Date decided: March 8, 2001**

**ORDER**

Upon review of Justo L. Morales ("Movant")'s Motion for Post Conviction Relief and the record, it appears to the Court:

1. A compilation of correspondence in the form of letters, motions, and petitions with their respective dates is necessary to properly address and understand Movant's positions. Movant's filing of correspondence has resulted in confusion. This unfortunately delayed a decision on the petition for Post Conviction Relief.
2. On March 31, 1999, Movant pled guilty to one count of Delivery of Heroin while represented by Counsel, Todd E. Conner, Esq. The State entered a *nolle prosequi* for the remaining drug charges in Superior Court and also other drug charges pending in the Court of Common Pleas.<sup>1</sup>
3. On April 30, 1999, Morales motioned, *pro se*, for Post Conviction Relief pursuant to

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<sup>1</sup> See "Plea Agreement," (March 31,1999), [1]; "Truth in Sentencing Guilty Plea Form," (March 31, 1999), [1]. See also "Plea Colloquy," (March 31, 1000), *passim*; "Sentence Order" (March 31, 1999), 1.

Superior Court Criminal Rule 61 as to his Fast Track plea to Delivery of Heroin.<sup>2</sup>

4. On August 31, 1999, Movant responded to the State's letter (July 06, 1999) that opposed Movant's petition for Post Conviction Relief. The Court misinterpreted this letter as a withdrawal of Movant's Post Conviction Relief petition. It appeared Movant requested this Court to consider his alleged rehabilitation as a factor for a modification of sentence in lieu of pursuing Post Conviction relief.

5. On January 07, 2000, Movant filed what appears to be a confession of guilt; a request for a reduction in sentence due to alleged rehabilitation; a discussion of "evidence" (video tape) that might have recorded his alleged undercover drug operations for the Wilmington Police Department;<sup>3</sup> and to request transfer to the "Crest" program.

6. On June 26, 2000, Movant filed what appears to be a letter requesting the status on Movant's Post Conviction Relief petition. Movant again asserts that his alleged rehabilitation should be considered by the Court, and Movant re-asserts the alleged promise made to him by the Wilmington Police Department in connection with Movant's alleged participation in undercover

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<sup>2</sup> Due to some confusion, all cited dates in this Order refer to Prothonotary "Filed" dates unless otherwise noted.

<sup>3</sup> Movant alleges that the Wilmington Police Department through its agent, Detective Junuzzio, promised Movant a one year level V sentence in return for allegedly substantial assistance in working in undercover drug operations that allegedly secured the arrest and conviction of two separate defendants. However, his counsel avers that:

Detective Junuzzio corroborated that after the arrest on the first set of [drug] charges, the defendant started to work for the police, but then dropped out of sight. When it was learned by the police that the defendant was still selling drugs, Detective Junuzzio no longer sought the defendant's assistance.

"Affidavit of Todd E. Conner, Esq." at [2], State v. Morales, Del. Super., IN No. 9809021900, Gebelein, J. (June 18, 1999) (emphasis added).

drug operations.<sup>4</sup>

7. On July 03, 2000, Movant filed a motion for transcripts at no cost due to indigency. The motion was denied by this Court because his request failed to "show a basis for a particularized need for a transcript."<sup>5</sup>

8. On August 07, 2000, Movant again filed a motion for transcripts apparently seeking reconsideration of the denial of Movant's first petition for transcripts.

9. On August 22, 2000, Movant files a motion to amend what is now understood as his petition for Post Conviction Relief. Movant's cited reasons for seeking to amend his petition include the original was allegedly "filed too pre-maturely [sic]...." Other reasons for amending Movant's original Post Conviction Relief include his claim that "erroneous information" from his probation officer was introduced during the plea agreement and sentencing. Movant also asserts that allegedly "perjured testimony" on the part of Detective Januzzio<sup>6</sup> was also introduced.<sup>7</sup>

10. Again on October 23, 2000, Movant filed a letter that details Movant's alleged

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<sup>4</sup> See footnote 2, *supra*.

<sup>5</sup> State v. Morales, at [1], Del. Super., ID No. 9809021900, Cooch, J. (July 18, 2000) (Order).

<sup>6</sup> See footnote 3, *Supra*.

<sup>7</sup> Nowhere in the record is there any support for this contention. Detective Junuzzio was not in the courtroom at the time of the plea agreement and sentencing. Further, Detective Junuzzio did not supply testimony at this time that could be allegedly construed as "perjured." Rather, he revealed to Counsel for the defendant, his assessment of Movant's assistance to the Wilmington Police Department. Id.

rehabilitation while incarcerated, and arguing that the Court should consider the alleged rehabilitation when reviewing his motion for an apparent sentencing modification. Movant also seeks in the alternative a hearing in which Movant can detail the circumstances surrounding his alleged assistance to the Wilmington Police Department.<sup>8</sup>

11. On October 31, 2000, Movant filed a letter that seeks to find out the status of his original petition for Post Conviction Relief.

12. On January 08, 2001, Movant filed a Writ of Mandamus, *pro se*, petitioning the Supreme Court of Delaware to order the Superior Court to issue an order in relation to Movant's original petition for Post Conviction Relief. The petition for a Writ of Mandamus also seeks to have reviewed the denial of Movant's petition to amend his original petition for Post Conviction Relief under an abuse of discretion standard.

13. In this latest filing, Movant for the first time avers that his probation officer, Mr. Pigford, promised Movant and his family that a "one (1) year level 5 [sic] Drug Treatment Program" would be recommended.<sup>9</sup> Movant also references the alleged promise made by Detective Januzzio and also includes, for the first time, a reference to Detective Jose Pacheco. Movant continues to maintain that Detective Januzzio "perjured" himself.<sup>10</sup> **Movant also addresses a request for a reduction (modification) of sentence.**

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<sup>8</sup>Id.

<sup>9</sup> The Court has taken some liberty in construing Movant's request in his Writ for Mandamus. On page 2, section 4, Movant referenced his probation officer and a one year level V drug treatment program in language that suffered from syntactical errors. The Court has construed the confusion in light most favorable to Movant. "Complaint in Proceedings for Extraordinary Writ" at 2[§] 4, State v. Morales, Del. Super., IN No. 9809021900, Gebelein, J. (January 8, 2001).

<sup>10</sup> See footnote 7, *supra*.

14. This petition also apparently appeals Movant's denied motion for cost-free transcripts and admits that his second request for cost-free transcripts was a "successive petition."<sup>11</sup>

15. On February 06, 2001, the Supreme Court of Delaware requested information from the Superior Court in reference to Movant's Writ of Mandamus.

16. On February 14, 2001, the Superior Court responded to the Supreme Court's request and indicated that the petition would be decided promptly.

17. In reviewing motions for post conviction relief, the Court must first determine whether a

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<sup>11</sup> "Extraordinary Writ" at 5, *supra*.

Movant's claim is barred by procedural requirements prior to addressing the merits of the underlying claims.<sup>12</sup> If the motion survives procedural bars, the merit of the claims must be based on a "sufficient factual and legal basis... where the motion shall specify all the grounds for relief which are available to movant... and shall be set forth in summary form the facts supporting each of the grounds thus specified."<sup>13</sup> The Court will not address Rule 61 motions that are conclusory or unsubstantiated.<sup>14</sup> The Court may also summarily dismiss a motion for post conviction relief if it "plainly appears from the motion... and the record of prior proceedings that the Movant is not entitled to relief..."<sup>15</sup> Additionally, to prevail on a claim of ineffective counsel, Movant must satisfy the two-part test illustrated in Strickland v. Washington. The Movant must show that his counsel's conduct fell below that of reasonable professional standards.<sup>16</sup> Secondly, the Movant must show that such conduct caused him actual prejudice.<sup>17</sup>

18. The motion for Post Conviction Relief must fail because the motion and the record before the Court clearly demonstrate that the Movant is not entitled to the relief sought. Nowhere in Movant's voluminous correspondence which includes Movant's letters, motions, and petitions is there any information other than conclusory allegations (unsubstantiated and contradicted by the

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<sup>12</sup> Bailey v. State, 588 A.2d 1121, 1127 (Del. Supr. 1991); Younger v. State, 580, A.2d 552, 554 (Del. Supr. 1990).

<sup>13</sup> Superior Court Rule 61 (b)(2).

<sup>14</sup> See Younger, supra, at 555; See also State v. Conlow, Del. Super., Cr.A.No. IN78-09-0985R1, Herlihy, J. (Oct. 5, 1990) at 5; State v. Gallo, Del. Super., Cr.A.No. IN87-03-0589-0594, Gebelein, J. (Sept. 2, 1988) at 10.

<sup>15</sup> Superior Court Rule 61 (d) (4).

<sup>16</sup> 466 U.S. 688, 688 (1984).

<sup>17</sup> Id. at 693.

record) that he is entitled to Post Conviction Relief. Additionally, Movant's motion and the record are completely devoid of any specifications that would support an ineffective counsel claim. Indeed, Movant spends considerably more time addressing his alleged rehabilitation and how it supports a sentencing modification, while acknowledging his responsibility for the acts that brought him before the Court.

19. Because there was substantiated confusion in the correspondence of the Movant and what it was he was seeking, Movant may petition the Court to consider a sentencing modification filed out of time. The petition for Post Conviction Relief must be denied.

For the foregoing reasons, Movant's petition for Post Conviction Relief is **DENIED**.

***IT IS SO ORDERED.***

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The Honorable Richard S. Gebelein

Orig: Prothonotary  
cc: Justo L. Morales, Movant  
Todd E. Conner, Esq.  
James A. Rambo, Esq., DAG