

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

P.O. BOX 746
COURTHOUSE
GEORGETOWN, DE 19947

May 15, 2003

Valerie Lynn Smith
WCI
660 Baylor Blvd.
New Castle, DE 19720

RE: State v. Smith, Def. ID# 9605000605

DATE SUBMITTED: May 7, 2003

Dear Ms. Smith:

Pending before the Court is the motion of Valerie Smith ("defendant") for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). This is my decision denying the motion.

In June, 1997, Ms. Smith was found guilty of the following charges: unlawful sexual intercourse in the first degree (two counts); attempted unlawful sexual intercourse in the first degree; sexual exploitation of a child; endangering the welfare of a child; and unlawful dealing with a child. She was sentenced thereon on August 15, 1997, and by order dated April 20, 1998, the Delaware Supreme Court affirmed the decisions of the Superior Court. Smith v. State, Del. Supr., No. 361, 1997, Walsh, J. (April 20, 1998). The Supreme Court mandate was dated May 7, 1998.

On April 10, 2003, defendant filed the pending motion for

postconviction relief. She also sought an exception to the three year time limitation for filing a Rule 61 motion on the ground that she is mentally ill. She did not provide any sworn documentation from any mental health professional which establishes that since May 7, 1998, she has been incompetent and unable to pursue any postconviction motion.

The Rule 61 motion is time-barred pursuant to Rule 61(i)(1) because more than three years have passed since the Supreme Court's issuance of the mandate. Jackson v. State, 654 A.2d 829, 833 (Del. 1995). The next question is whether any exceptions to the procedural bars as set forth in Rule 61(i)(5) exist. Those exceptions are that the Court lacked jurisdiction or that there was a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction. Rule 61(i)(5). Defendant does not argue that either of those exceptions exist. Instead, she argues that her mental incompetency tolled the statute of limitations.

This Court would be inclined, for fairness purposes, to consider whether the three year Rule 61 statute of limitations was tolled if a defendant established that during the period of time at issue, he or she had a "mental deficiency that renders one unable to comprehend or transact the ordinary affairs of life." Sheridan v. Sheridan, Del. Ch., C.A. No. 14381, Kiger, Master (July 2, 1997) (Report), confirmed, Del. Ch., C.A. No. 14381, Balick, V.C. (July

25, 1997), aff'd, 705 A.2d 245 (Del. 1997). See also 10 Del. C. § 8116.¹ However, in order for this Court to consider such a position and set the matter for a hearing, a defendant would have to submit, at a minimum, sworn documentation from a psychiatrist or psychologist stating that since the time when the judgment of conviction became final until the time of the filing of the Rule 61 motion, the defendant suffered from such a mental deficiency.

In this case, defendant has not submitted any such documentation. Consequently, the Court considers this Rule 61 motion time-barred and finds no exceptions to the time bar exist. For the foregoing reasons, the Rule 61 motion is denied.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
Melanie C. Withers, Esquire
Karl Haller, Esquire

¹In 10 Del. C. § 8116, it is provided:

If a person entitled to any action comprehended within §§ 8101-8115 of this title, shall have been, at the time of the accruing of the cause of such action, under disability of infancy or incompetency of mind, this chapter shall not be a bar to such action during the continuance of such disability, nor until the expiration of 3 years from the removal thereof.