

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

STATE OF DELAWARE)	
)	
v.)	Cr. A. No. IK95-11-0556
)	
RAYMOND DEMBY a/k/a)	
RAHEEM LOVE,)	
)	
Defendant.)	

Date Submitted: November 22, 2002
Date Decided: March 24, 2003

ORDER

UPON DEFENDANT’S THIRD MOTION FOR POSTCONVICTION RELIEF

DENIED.

John Williams, Esq., Deputy Attorney General, Department of Justice, Dover, Delaware. 19901. Attorney for the State.

Raymond Demby a/k/a Raheem Love, Delaware Correctional Center, Smyrna, DE 19977. Defendant is *Pro Se*.

ALFORD, J.

On this 24th day of March, 2003, having read and considered Raymond Demby's ("Defendant") Third Motion for Postconviction Relief, filed in this Court pursuant to Superior Court Criminal Rule 61, it appears to the Court that:

(1) On March 11, 1996, a jury found Defendant guilty of delivery of cocaine in violation of Title 16, Section 4751 of the Delaware Code, as amended. On May 9, 1996, Defendant was sentenced to thirty years imprisonment at Level V, fifteen years being a minimum mandatory period of incarceration, suspended after fifteen years for fifteen years at Level IV, suspended after successful completion of any drug treatment program for the balance at Level III, suspended after one year for the balance at Level II.¹

(2) Defendant appealed his conviction to the Delaware Supreme Court. In his appeal, Defendant contested the introduction of evidence at his trial. Defendant alleged that the State had not established the chain of custody, which was a condition precedent to the admission of the cocaine that it was alleged he sold to police officers in Dover, Delaware. Defendant argued that Delaware's "chain of custody" statute, 10 *Del. C.* §§ 4331 (1) and (2), effectively repealed a defendant's rights afforded under Delaware Rules of Evidence 901(a). The Supreme Court

¹Defendant's sentence was corrected on June 4, 1996, stating that the first 15 years of the sentence is mandatory, *pursuant to title 16, section 4763 (a)(3) of the Delaware Code.*

affirmed Defendant's conviction.² The Court held that the statute was consistent with due process guarantees of the United States and Delaware Constitutions because it did not limit a defendant's right to raise issues concerning possible contamination or to call witnesses to demonstrate the possibility of tampering during transportation for exclusionary purposes.³

(3) On June 2, 1998 Defendant filed his first Motion for Postconviction Relief

on the grounds of (i) perjury by police officers; (ii) failure to establish the chain of custody of the cocaine placed into evidence; and (iii) reasonable doubt of his conviction because there was no proof of criminal intent. The first ground was procedurally barred. The second ground had been formerly adjudicated and was therefore barred. The third ground was found to be unsubstantiated and was summarily dismissed. Thus, Defendant's first Motion for Postconviction Relief was denied.

(4) On October 1, 1999, Defendant filed his second Motion for Postconviction Relief which was dismissed on October 12, 1999.

² *Demby v. State*, Del. Supr., No. 249, 1996, Walsh, J. (June 27, 1997).

³ *Id.* at 11-13.

(5) In the instant Motion Defendant seeks relief from his conviction and asserts two grounds for relief: (i) violation of the *Ex Post Facto* Clause of the United States Constitution and (ii) illegal sentencing.

(6) In evaluating a postconviction relief motion, the Court must first ascertain if any procedural bars of Superior Court Criminal Rule 61(i) apply to the case.⁴ If a procedural bar is found to exist, the Court should refrain from considering the merits of the individual claims.⁵

(7) Summary dismissal is provided for pursuant to Rule 61(d)(4) "[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 ..." This Court will not address claims for postconviction relief that are conclusory and unsubstantiated.⁶ Pursuant to Rule 61(a), a motion for postconviction relief must be based on "a sufficient factual and legal basis." In addition, pursuant to Rule 61(b)(2), "[t]he motion shall specify all the grounds for relief which are available to movant ..., and shall be set forth in summary

⁴ See *Younger v. State*, 580 A.2d 552, 554 (Del. Supr. 1990); Super. Ct. Civ. R. 61(i).

⁵ See *Id.*

⁶ See *Younger.*, 580 A.2d at 555; *State v. Conlow*, Del. Super. Ct., Cr. A. No. IN78-09-0985R1, Herlihy, J. (Oct. 5, 1990) at 5; *State v. Gallo*, Del. Super. Ct., Cr. A. No. IN87-03-0589-0594, Gebelein, J. (Sept. 2, 1988) at 10.

from the facts supporting each of the grounds thus specified." The Court addresses each of Defendant's claims in the order presented.

(8) Defendant argues that his sentence using a prior conviction that was entered prior to his sentencing is a violation of the *Ex Post Facto* Clause of the United States Constitution. Article I, Section 10, of the United States Constitution provides that "No State shall...pass any... *ex post facto* Law..."⁷ The prohibition against *ex post facto* laws applies only to retroactive penal statutes that disadvantage a defendant.⁸ A substantive change in a penal statute would be *ex post facto*, while a procedural change is not.⁹ In the instant case, there has been no change to the statute under which Defendant was sentenced and thus Defendant's argument is without merit.¹⁰

(9) Defendant argues that he was sentenced under the incorrect statute enhancing his sentence. This argument is unsubstantiated. Additionally, under Rule 61(i), postconviction claims for relief must be brought within three years of the conviction becoming final unless Defendant asserts a retroactively applicable right

⁷U.S. CONST. Art.I § 10.

⁸*Collins v. Youngblood*, 497 U.S. 37, 41 (1990).

⁹*Dobbert v. Florida*, 432 U.S. 282, 293 (1977).

¹⁰DEL. CODE ANN. tit. 16, § 4763 (a)(3).

that is newly recognized after the judgment of conviction or that there was a miscarriage of justice because of a constitutional violation. There is no constitutional violation and from the face of Defendant's motion it appears that his challenge is not based upon a newly recognized retroactively applicable right.

For the aforementioned reasons, the Court finds 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 **DENIED**.

IT IS SO ORDERED.

J.

ORIGINAL: Prothonotary's Office - CRIMINAL DIV.