

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

STATE OF DELAWARE)	
)	
v.)	ID No. 9809019760
)	Cr. A. No. IN98-10-0243R1,
WILLIAM JAY HAMMONS,)	IN98-10-0251R1,
Defendant.)	IN98-12-1139R1
)	
)	

ORDER

This 3rd day of February, 2004, upon consideration of the defendant's Motion for Expansion of the Record pursuant to Superior Court Criminal Rule 61(g), it appears to the Court that:

1. On September 30, 2003, Defendant filed a Motion for Postconviction Relief consisting of a ninety-six-page memorandum of law in support of his motion and alleging ineffective assistance of counsel as the sole ground for relief. Defendant set forth "twelve arguments" in support of this claim.

2. On October 21, 2003, Defendant filed a twenty-nine page Supplemental Memorandum in Support of the Motion for Postconviction Relief. Reviewed in its entirety, Defendant's Rule 61 motion was comprised of an opening memorandum of law and a supporting supplemental memorandum of law totaling one hundred twenty-five-pages ("collectively, "memorandum").

3. By Order, dated December 29, 2003, after carefully considering Defendant's Rule 61 motion, the Court found that Defendant's Rule 61 motion was non compliant with the requirements of Rule 61(b)(2) regarding the permitted "content" of a motion for postconviction relief. Defendant's one hundred twenty-five-page memorandum in support of his Rule 61 motion far exceeded the allowable purpose and the content limitations envisioned by Rule 61. Specifically, the Court explained that Defendant's memorandum violated the intended "summary form" scope and format for seeking collateral relief as enumerated in Rule 61(b)(2). The Court ordered that Defendant address these arguments in a more concise, abridged and summary fashion because the motion was unduly wordy, rambling, and disproportionately long in comparison to the substantive content of the claim he was invoking. Additionally, the Court noted that Defendant could condense his twelve arguments predicated on his claim of ineffective assistance of counsel, thereby reducing the length of his motion significantly.

As stated in its December 29, 2003 Order, it was within this Court's discretion not to issue a decision on the merits of Defendant's postconviction motion until the motion complied with the technical requirements of Rule 61(b)(2). The Court also vacated its October 15, 2003 Order, which requested responses from Defendant's trial counsel, from the State, and from Defendant regarding Defendant's Rule 61 claims, and returned Defendant's noncomplying motion to

him without ruling on its merits. Defendant was instructed to resubmit an amended Rule 61 motion for postconviction relief setting forth his claim of ineffective assistance of counsel predicated on his “twelve arguments,” in a concise, “summary form,” of no more than thirty-five pages.

4. On January 21, 2004, before filing an amended Rule 61 motion, Defendant filed a Motion for Expansion of the Record pursuant to Superior Court Criminal Rule 61(g). In this motion, Defendant requests that certain documents and reports be provided to him by his former trial counsel, the State, and the New Castle County Office of the Prothonotary to assist him in supporting the claims he advances in his, yet-to-be-filed, Rule 61 motion.

In particular, Defendant requests a copy of the full hand-written statement of Kristin Bakalar. Defendant alleges that his former trial counsel “deliberately withheld” Ms. Bakalar’s statement from him and that it contains exculpatory evidence.¹ Second, Defendant alleges that the search warrant, executed at his apartment in October of 1998, “contained exculpatory evidence that was both relevant and material to his defense, and that the State prosecutor deliberately withheld this information from the defense in violation of Brady v. Maryland, 83 S. Ct. 1194 (1963).”² Third, Defendant is petitioning for a copy of a rape report taken by DNREC Officer John Wales of an apparent rape incident, separate from

¹ Defendant’s Motion For Expansion of Record, dated January 16, 2004, at 2-3 (hereinafter “Def. Mot. at ____.”).

² Def. Mot. at 3.

the criminal offense that Defendant plead guilty to, and for which there was insufficient evidence to charge the Defendant with this crime. Defendant contends that this report was “[b]oth relevant and material to his defense and that counsel was ineffective for failing to collect and/or investigate this evidence.”³ Lastly, Defendant purports that the contents of docket entry number 105 of the Superior Court docket contains information proving that his trial counsel “was deliberately withholding evidence from him.”⁴ Examination of the docket indicates that entry number 105, filed on April 5, 2002, is a letter from the Defendant requesting information on his previous letter that he had forwarded to the Court, in which he requested that the Court grant him *pro se* and indigent status. The docket indicates that the previous letter was returned to the Defendant and stated that his requests should be properly forwarded to the State Attorney General’s Office with a certificate of service attached.

5. By letter to the Court, dated January 21, 2004, the State responded to Defendant’s motion for expansion of the record, refuting Defendant’s need for expansion of the record predicated on his insinuations of alleged prejudice. As to Ms. Bakalar’s statement, the evidence obtained from the search warrant, and the rape report taken by Officer Wales, the State asserts that all of the aforementioned was provided to Defendant’s trial counsel prior to the commencement of

³ Def. Mot. at 3.

⁴ Def. Mot. at 4.

Defendant's trial. It is the State's contention that the Defendant has failed to sufficiently demonstrate why he wants these materials and that he has repeatedly demanded access to these documents after having been provided with them at the time of trial.

Finally, in a response letter to the Court, dated January 22, 2004, the Defendant challenges the State's "outrageous allegations and false statements" contained in its January 21 letter, reasserting his contention that he needs the requested documents to substantiate his claim of ineffective assistance of counsel to prepare his Rule 61 motion for postconviction relief.

6. Before the Court considers the merits of Defendant's motion for expansion of the record, it is obliged to advise the Defendant that his motion is premature and has been improperly submitted to the Court within the constructs of the requirements of Rule 61(g). Rule 61(g)(1) affords the Court the opportunity to expand the record as "[t]he judge *may* direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the *merits of the motion*."⁵ Purely discretionary, the Rule is a vehicle utilized by the Court only after it has reviewed a movant's motion for postconviction relief, and, only when the Court determines that further informative materials may be required to effectively and properly evaluate a movant's motion. Further, the enlargement of the record, permitted under Rule 61(g)(1) and (2), is only ordered by the Court

in those instances when a movant sets forth allegations of ineffective assistance of counsel in a motion for postconviction relief.

Defendant's motion for expansion does not comport with the procedural requirements of Rule 61(g). The Court may direct expansion of the record upon receipt of a defendant's Rule 61 motion. Defendant has failed to file his amended motion with the Court. In essence, Defendant is requesting that the Court assist him in a wasteful, unproductive, fact-finding expedition to foster his efforts in drafting and substantiating his amended Rule 61 motion. At this time, in the interests of judicial economy, and in furtherance of this Court's prior considerations of Defendant's multiple postconviction relief motions, the Court will evaluate Defendant's most recent motion. The Court is confident that, whether it postpones consideration of Defendant's motion until such time as Defendant files an amended Rule 61 motion, or grants consideration of the motion at this juncture, the Court's decision will be the same.

7. After reviewing the record, including, but not limited to, the transcripts from the suppression proceedings, the trial, and the plea colloquy/sentencing proceedings, the Court finds that the Defendant has failed to adequately and reasonably substantiate any reason why he needs the materials he requests in his motion for expansion of the record to substantiate his sole claim of ineffective assistance of counsel. Defendant's request for these materials is based

⁵ SUPER. CT. CRIM. R. 61(g)(1)(emphasis added).

purely on conclusory allegations and accusations directed at his former trial counsel. Not only does the record indicate that these materials had already been furnished to Defendant's trial counsel prior to the trial and prior to Defendant's entry of a guilty plea, but the record also indicates that, subsequently, Defendant has persistently and repeatedly made requests for these same documents to either his former trial counsel, the Court, the State, and/or the Prothonotary's Office after already having been provided or given access to them.

Defendant neither establishes, nor is able to support, a claim of potential prejudice, thereby necessitating a need by this Court to consider his motion any further. The Court fails to discern a scintilla of materiality and/or relevancy in these documents that would warrant an expansion of the record. Defendant hurls accusations at his prior trial counsel in both the instant motion and in his January 22, 2004 response letter. The foundation for allegations of ineffective assistance of counsel are more properly set forth in a motion for postconviction relief, not in a motion for expansion of the record. Thus, Defendant has failed to make the requisite showing to the Court to convince the Court for the need to direct expansion of the record.

In conclusion, for all the foregoing reasons, Defendant's Motion for Expansion of the Record is **DENIED**.

Peggy L. Ableman, Judge

Original to Prothonotary – Criminal
cc: Donald R. Roberts, Esquire, Department of Justice
Andrew J. Witherell, Esquire
William Jay Hammons