

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE)	
)	
v.)	ID No. 9805012046
)	
JUSTIN BURRELL,)	
)	
Defendant.)	

Submitted: January 20, 2004
Decided: April 26, 2004

On Defendant's Motion for Postconviction Relief. Denied.

ORDER

Darryl K. Fountain, 1st Floor, 715 King Street, Wilmington, Delaware 19801.
Attorney for Defendant.

Dennis Kelleher, Deputy Attorney General, Department of Justice, 102 West
Water Street, Dover, Delaware 19904.

CARPENTER, J.

On this 26th day of April, 2004, upon consideration of Defendant's Motion for Postconviction Relief it appears to the Court that:

1. Justin Burrell ("Defendant") has filed a Motion for Postconviction Relief, through his counsel, Darryl K. Fountain, pursuant to Superior Court Criminal Rule 61 and the State has filed its Response. For the reasons set forth below, Defendant's Motion for Postconviction Relief is **DENIED**.

2. In August 1999, a jury trial was held in Kent County Superior Court and Defendant was found guilty of Manslaughter, Murder in the First Degree (Felony Murder), Robbery in the First Degree, Burglary in the First Degree, Possession of a Firearm During the Commission of a Felony and Conspiracy in the Second Degree. On October 22, 1999, this Court sentenced the Defendant to life in prison.

3. Consequently, Defendant filed a direct appeal to the Supreme Court of Delaware challenging his conviction. In Defendant's direct appeal, he raised three separate issues. First, he asserted that the Superior Court's decision to admit the out-of-court statement of Danny Fenwick, Jr., as testified to by Officer Disharoon, of the decedent's saying "please don't shoot me" immediately prior to the gunshot was reversible error.¹ Second, Defendant argued that the failure of the Superior Court to grant Defendant's motion for acquittal at the conclusion of the State's case was

¹*See Burrell v. State of Delaware*, 766 A.2d 19, 21 (Del. 2000).

reversible error.² Lastly, Defendant asserted that the failure of the trial judge to instruct the jury with regard to the requested defense instructions³ when there was an evidentiary basis for doing so deprived the Defendant of a fair trial and due process of law.⁴ After considering each of Defendant's arguments, the Supreme Court concluded that the record reflected no reversible error and affirmed the judgments of the Superior Court.⁵

4. Thereafter, Defendant filed this Motion for Postconviction Relief and asserted the following two grounds for relief:

- (a) The State made improper remarks during the opening and closing statements that were prejudicial to Defendant; and
- (b) The trial court's jury instructions allowed the jury to reach impermissible inferences.

5. Before addressing the merits of any claims raised in a motion seeking postconviction relief, this Court must first apply the rules governing the procedural requirements of Superior Court Criminal Rule 61(i).⁶

²*See id.*

³At trial, defense counsel requested a jury instruction pursuant to 11 *Del. C.* § 441(1), which was an instruction as to the affirmative defense of ignorance or mistake of fact.

⁴*See Burrell*, 799 A.2d at 21.

⁵*See id.*

⁶*See Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) (citing *Harris v. Reed*, 498 U.S. 255, 265 (1989)).

6. Superior Court Criminal Rule 61(i)(4) provides,

[a]ny ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.

The Defendant's present claims were raised previously, rejected by this Court at trial and were not presented on appeal. Therefore, for this Court to proceed to the merits of Defendant's claims, Defendant must show how reconsideration of these claims would serve the interest of justice.⁷ The Court concludes that Defendant has failed to make such a showing.

7. Therefore, based upon the above reasoning, the Defendant is not entitled to postconviction relief and the Motion is hereby **DENIED**.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.

⁷*See id.*