

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
 v.) ID #9609002180
)
 ARTHUR T. WATSON,)
)
 Defendant.)

Submitted: February 19, 2004

Decided: April 28, 2004

On Defendant's Second *Pro Se* Motion for Postconviction Relief.

ORDER

This 28th day of April, 2004, upon consideration of Defendant's second *pro se* Motion for Postconviction Relief, it appears to this Court that:

1. Arthur T. Watson, Jr. ("Watson") has filed this second Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. For the reasons stated below, Watson's motion is **SUMMARILY DISMISSED**.
2. In May 1997, a jury found Watson guilty of one count of Robbery First Degree. At trial, Watson's counsel orally moved for a judgment of acquittal, attacking the reliability of the victim's identification of Watson as the perpetrator; the Court denied Watson's application, finding that the State had introduced evidence sufficient that, if the jury so found, would establish Watson as the perpetrator. After the jury found Watson guilty, he was sentenced to 25 years at Level V, followed by six months of supervision at

Level IV. The 25-year sentence was imposed pursuant to § 4214(a) of Title 11, Delaware’s “habitual offender” statute.

Watson appealed his conviction and sentencing to the Delaware Supreme Court but did not claim that this Court’s denial of his motion for judgment of acquittal was error; the Supreme Court affirmed, holding that Watson’s appeal (on the unrelated grounds of Watson’s access to the arrest and conviction records of jury pool members) was without merit.¹ Watson thereafter petitioned for a writ of *habeas corpus* to the United States District Court for the District of Delaware; that Court denied Watson’s petition.²

In January 2002, Watson filed in this Court a two count *pro se* motion for postconviction relief.³ Ground One of the Motion was that “suggestive identification methods” violated Watson’s “due process rights to equal protection of the law”; Ground Two of Watson’s Motion simply states “Correction of Illegal Sentence—11 Del. C. § 4214(a),” and is followed by Watson’s assertion that he was sentenced “without special conditions...for a chance for rehabilitative treatment....” Watson averred that he was previously unable to raise either of his asserted claims because of Superior Court

¹ *Watson v. State*, Del. Supr., No. 387, 1997, Hartnett, J. (Oct. 8, 1998).

² *Watson v. Snyder*, C.A. No. 99-756 RRM (D. Del. June 28, 2001).

³ *Watson v. State*, Del. Super., No. 9609002180. Cooch, J. (April 3, 2002).

Criminal Rule 47⁴ and Supreme Court Rule 8.⁵ Watson’s first ground for postconviction relief was denied on the basis that this Court had previously adjudicated the unreliable identification claim and Superior Court Criminal Rule 61(i)(4) bars Watson’s claim unless the “interest of justice” requires its reconsideration. The second ground was denied because Watson had not argued in any previous proceeding prior to the first motion for postconviction relief the validity of his having been sentenced under Delaware’s “habitual offender” statute; because Watson was not able to show “cause” and “prejudice,” and absent a claim of ineffective assistance of counsel, this claim was procedurally barred by Superior Court Criminal Rule 61(i)(3).

3. Watson now makes a claim of ineffective assistance of counsel in his second motion for postconviction relief. Watson claims that trial counsel provided ineffective assistance of counsel by not requesting a voir dire question that would probe for potential racial bias on the part of prospective jurors. Watson makes unsubstantiated claims that the question of racial bias was required because “jurors do not volunteer information about their specific beliefs and feelings without such a question.”⁶ Watson further states

⁴ Superior Court Criminal Rule 47 provides that the Court “will not consider *pro se* applications by defendants who are represented by counsel unless the defendant has been granted permission to participate with counsel in the defense.”

⁵ Supreme Court Rule 8 provides that only issues “presented to the trial court may be presented for review...[unless] the interests of justice so require....”

⁶ Def’s Memorandum in Support of Motion for Postconviction Relief at 5 (hereinafter “Def’s mem. at _.”).

that “because race was injected as an issue in his trial, at this point it would violate his rights under the Federal and Delaware Constitutions to assume that individuals [jury pool] are not prejudiced, especially when the record is devoid of an affirmative answer otherwise.”⁷

4. Before addressing the merits of any claim raised in a motion seeking postconviction relief, the Court must first consider the procedural elements of Superior Court Criminal Rule 61.⁸ To protect the integrity of the procedural rules, the Court should not consider the merits of postconviction claims where a procedural bar exists.⁹

Under Superior Court Criminal Rule 61(i)(1), a motion for postconviction relief “may not be filed more than three years after judgment of conviction is final....”¹⁰ The procedural bar of Superior Court Criminal Rule 61(i)(1) may potentially be overcome by the “fundamental fairness” exception in Superior Court

⁷ *Id.* Defendant’s claim that race was “injected as an issue” is based solely on the fact that Defendant is African-American and the two victims are Caucasians.

⁸ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) (citing *Harris v. Reed*, 489 U.S. 255, 265 (1989)).

⁹ *State v. Gattis*, Del. Super., Cr.A. No IN-90-05-1017, Barron, J. (Dec. 28, 1995) (citing *Younger*, 580 A.2d at 554).

¹⁰ Super. Ct. Crim. R. 61(i)(1).

Criminal Rule 61(i)(5), but that exception is narrow and is applied only in limited circumstances.¹¹

Rule 61(i)(2) provides that “[a]ny ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim is warranted in the interest of justice.”¹² The Supreme Court has held that a defendant must raise all ground “to support his appeal that are raised previously” or those grounds will be deemed waived and will not be addressed by the Supreme Court on the appeal.¹³

A defendant “must support...ineffective assistance of counsel claims with concrete allegations of actual prejudice, otherwise the movant risks summary dismissal.”¹⁴ Superior Court Criminal Rule 61(d)(4) provides that if 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 and cause the movant to be notified.”¹⁵

¹¹ *Younger*, 580 A.2d at 555.

¹² Super. Ct. Crim. R. 61(i)(2).

¹³ *Slade v. State*, 818 A.2d 970 (Del. 2003) (holding that to the extent a post conviction relief defendant has not argued other grounds to support his appeal that are raised previously, those grounds are deemed waived and will not be addressed by the Supreme Court on the appeal).

¹⁴ *Younger*, 580 A.2d at 556.

¹⁵ Super. Ct. Crim. R. 61(d)(4).

5. Watson filed the instant motion on February 13, 2004. The Supreme Court of Delaware completed its review of Watson's case in October 1998. The three year period for filing a claim for postconviction relief ended on October 8, 2001.¹⁶ As this Motion was filed almost two and a half years after the expiration of the statutory time period for filing, this Court finds Watson's motion for postconviction relief to be untimely under Superior Court Criminal Rule 61(i)(1).

Watson was required to include in his prior postconviction applications all grounds for relief which were available to him.¹⁷ His present contention of ineffective assistance of counsel with regard to the voir dire was available and was known, or should have been known, to Watson at the time of his first motion for postconviction relief.¹⁸ In order to raise the issue at this late date in his present petition, Watson is required to show that consideration of the claim is warranted in the "interests of justice,"¹⁹ or that a constitutional violation has occurred.²⁰ Watson has merely made conclusory statements regarding his allegations of ineffectiveness

¹⁶ *Jackson v. State*, Del. Supr., 654 A.2d 829, 830-831 (1995) (holding that the better reasoned approach supports resolving the ambiguity [of when the three year period begins to run] in favor of the extended period [I]f a defendant takes a direct appeal of his conviction, the three year period under Rule 61(i)(1) begins to run upon completion of that review.)

¹⁷ Super. Ct. Crim. R. 61(b)(2).

¹⁸ *Robinson v. State*, Del. Supr., 562 A.2d 1184, 1185 (1989).

¹⁹ Super. Ct. Crim. R. 63(i)(2).

²⁰ Super. Ct. Crim. R. 61(i)(5).

of counsel. Under the circumstances, such statements do not lead this Court to the conclusion that the claim should be considered under either of these provisions.

6. Based on the above, this Court finds that the procedural bars of Superior Court Criminal Rule 61, specifically Rule 61(i)(1) and 61(i)(2), apply to preclude Watson's asserted claims for postconviction relief. Defendant's Motion is therefore **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

cc: Prothonotary
Maria T. Knoll, Esquire, Deputy Attorney General
Arthur T. Watson, Jr.
Presentence