

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

P.O. BOX 746
COURTHOUSE
GEORGETOWN, DE 19947

July 1, 2004

George J. Dombrosky
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: State v. Dombrosky, Def. ID# 9708004381

DATE SUBMITTED: May 17, 2004

Dear Mr. Dombrosky:

Pending before the Court is the third motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("R. 61") which defendant George J. Dombrosky ("defendant") has filed in this matter. The motion is denied as procedurally barred.

DISCUSSION

Defendant pled guilty to murder in the second degree and unlawful sexual intercourse in the first degree, and was sentenced thereon on September 4, 1998. He did not file an appeal therefrom.

On January 4, 1999, defendant filed his first Rule 61 motion. He advanced several arguments. He claimed ineffective assistance of counsel. In support thereof, he argued:

- 1) Defendant was coerced into entering the plea.

- 2) Counsel promised him the sentence would be twenty-five years.
- 3) Counsel lied to him or misrepresented to him what were the terms of the plea.
- 4) Counsel misrepresented who would be testifying and what evidence would be introduced if he went to trial.
- 5) Counsel failed to negotiate a plea pursuant to Super. Ct. Crim. Rule 11(e)(1).
- 6) Counsel did not review the PSI report; that report portrayed him as a career criminal and information in it was untrue, misleading, and wrong; and the Court imposed a greater sentence in light of this misinformation.
- 7) Counsel failed to inform defendant he could appeal his sentence and failed to appeal his sentence.
- 8) Counsel failed to investigate and develop mitigating evidence that would have supported his case during sentencing.

The Court denied his Rule 61 motion on the ineffective assistance of counsel claims. State v. Dombrosky, Del. Super., Def. ID# 9708004381, Lee, J. (August 10, 1999). It also denied other claims defendant raised as being procedurally barred or having been waived. Id. The Supreme Court dismissed the appeal of this decision as untimely. Dombrosky v. State, 741 A.2d 1026 (Del. 1999).

On January 3, 2002, defendant filed his second Rule 61 motion. He sought to withdraw his guilty plea on the ground that trial counsel was ineffective. In support of that claim, he argued that trial counsel failed to investigate and develop mitigating evidence in connection with his sentencing and with the rape charge and trial counsel was influenced by the lie detector test which trial counsel requested defendant to take. This Court dismissed the appeal as procedurally

barred by Super. Ct. Crim. R. 61(i)(1) and (i)(2). State v. Dombrosky, Del. Super., Def. ID# 9708004381, Stokes, J. (Jan. 14, 2002). Defendant did not appeal this decision.

In the pending motion, defendant raises several grounds for relief. In support of a claim for “misrepresentation”, which actually is a claim of coercion, defendant asserts his trial attorney’s false promises and lies, including a promise he would receive a sentence of twenty-five (25) years, coerced him into entering the plea. He makes an additional “coercion” claim, contending that his attorney told him that if he did not take the plea, he would face the death penalty. Defendant also argues that had favorable evidence, namely an autopsy report which defendant contends shows the victim was not raped, not been suppressed, then the rape charge would have been dropped. Finally, he argues, as he did in his first postconviction relief motion, that his intoxication precluded him from forming the intent to kill his victim, and consequently, he should have been convicted of manslaughter.

The pertinent provisions of Super. Ct. Crim. R. 61 are as follows:

(i) *Bars to relief.* (1) Time limitation. A motion for postconviction relief may not be filed more than three years after the judgment of conviction is final....

(2) Repetitive motion. Any 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.

(4) Former adjudication. Any 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.

Bars inapplicable. The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to 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.

This pending motion is time-barred since it was not brought within three years after the judgment of conviction was final. Super. Ct. Crim. R. 61(i)(1). There is no exception applicable which would overcome the time bar. Defendant has not shown or even asserted that the Court lacked jurisdiction or that there exists 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. Super. Ct. Crim. R. 61(i)(5).

The claims also are barred for reasons other than timeliness.

Some of the claims are procedurally barred because defendant failed to assert them in his first Rule 61 motion. Defendant has not established that any exceptions to the bar exist; he has failed to assert or show that consideration of the claims is warranted in the interest of justice, that the Court lacked jurisdiction, or that there exists 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. Super. Ct. Crim. R. 61(i)(2) and (5).

All remaining assertions are procedurally barred because they previously have been adjudicated, and defendant has not attempted to show how the reconsideration of any such claims is warranted in the interest of justice. Super. Ct. Crim. R. 61(i)(4).

For the foregoing reasons, the Rule 61 motion is denied.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
James Adkins, Esquire
Karl Haller, Esquire
Merritt Burke, Esquire