

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

**STATE OF DELAWARE**

v.

**DERRIS S. GIBSON**

Defendant.

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ID No. 93004839DI

Submitted: March 1, 2004

Decided: June 29, 2004

**MEMORANDUM ORDER**

On this 30<sup>th</sup> day of June, 2004, upon consideration of Defendant's Motion for Postconviction Relief and Motion for Expenditure of Funds, it appears to the court that:

1. Derris S. Gibson ("Gibson") has filed a Motion for Postconviction Relief *pro se*, apparently pursuant to Superior Court Criminal Rule 61. For the reasons set forth below, Gibson's Motion is **DENIED**.

2. In July 1993, a jury trial was held in New Castle County Superior Court and Gibson was found guilty of Attempted Murder in the First Degree, Robbery First Degree, Possession of a Deadly Weapon During Commission of a

Felony (two counts), and Criminal Impersonation. On July 16, 1993, Gibson was sentenced to life plus 35 years in prison.

3. After two vacations and reimpositions of his sentence to allow Gibson the opportunity to file an appeal, Gibson filed a direct appeal to the Supreme Court of Delaware who affirmed the judgments of the Superior Court on June 9, 2000.

4. On March 1, 2004, Gibson filed this Motion for Postconviction Relief and asserted the following grounds for relief:

- (a) newly discovered evidence concerning testimony of State witnesses; and
- (b) postconviction counsel was ineffective.

5. Before addressing the merits of any claims raised in a motion seeking postconviction relief, the court must first apply the rules governing the procedural requirements of Superior Court Criminal Rule 61(i).<sup>1</sup>

6. Superior Court Criminal Rule 61(i)(1) provides that “a motion for postconviction relief may not be filed more than three years after the judgment of conviction is final. . .” The three-year limit in this case began running June 9, 2000 when the Delaware Supreme Court affirmed the ruling of the Superior Court and, therefore, expired June 9, 2003.

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<sup>1</sup> *Stone v. State*, 690 A.2d 924, 925 (Del. 1996) (internal citation omitted).

7. This time bar may be inapplicable if the fundamental fairness of the proceeding is at issue.<sup>2</sup> The “fundamental fairness” exception is a narrow one and is applied only in limited circumstances.<sup>3</sup>

8. The court finds that if Gibson’s charge of perjury of witnesses were true, an issue of fundamental fairness would be present. The court finds, however, that Gibson’s claim is not supported by the evidence he has provided – in fact, it shows just the opposite contention. Gibson submitted the report of a detective he hired. The court finds the report, rather than corroborate Gibson’s allegations, supports the testimony of the witnesses at trial.

9. The court, therefore, concludes that Gibson has failed to present evidence that would support an exception to the procedural bar of Rule 61(i)(1) with respect to his first ground for postconviction relief.

10. As the first ground for postconviction relief has no basis, Gibson’s second ground is also baseless. It is not ineffective assistance of counsel to fail to raise baseless claims for relief.<sup>4</sup>

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<sup>2</sup> Super Ct. Crim. R. 61(i)(5).

<sup>3</sup> *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996); *see also State v. Morales*, 2001 WL 1486169 at \*2 (Del. Super.), *aff’d* 791 A.2d 751 (Del. 2002).

<sup>4</sup> *Strickland v. Washington*, 466 U.S. 668, 691 (1984) (holding that failure of counsel to pursue fruitless claims “may not later be challenged as unreasonable”); *see also Holland v. Horn*, 150 F. Supp. 706, 787 (E.D. Pa. 2001) (holding that counsel cannot be ineffective for failing to raise a meritless claim).

11. The court, therefore, **DENIES** Gibson's Motion for Postconviction Relief.

12. Gibson has also filed a Motion for Expenditure of Funds. Gibson states the funds are needed to hire a private investigator to continue the investigation of the trial witnesses.

13. Because the court has denied Gibson's Motion for Postconviction relief, there is no need to pursue the matter further. The court, therefore, **DENIES as moot** Gibson's Motion for Expenditure of Funds.

**IT IS SO ORDERED.**

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Calvin L. Scott, Jr.  
Superior Court Judge