

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

P.O. BOX 746
COURTHOUSE
GEORGETOWN, DE 19947

July 27, 2004

Thomas A. Morgan
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: State v. Morgan, Def. ID# 00189563

DATE SUBMITTED: April 21, 2004

Dear Mr. Morgan:

Pending before the Court is the third motion for postconviction relief pursuant to Superior Court Criminal Rule 61 which defendant Thomas A. Morgan (“defendant”) has filed in this matter. This is my decision denying the motion as procedurally barred.

On August 12, 1993, a jury found defendant guilty of the charges of unlawful sexual intercourse in the first degree (2 counts); unlawful sexual contact in the second degree; and kidnapping in the second degree. Defendant was sentenced thereon on October 15, 1993. An appeal was taken. Defendant’s trial attorney moved to withdraw, arguing no appealable issues existed. Despite being given the opportunity to do so, defendant did not present any appealable issues to the Supreme Court. The Supreme Court affirmed the judgment of the Superior Court. Morgan v. State, Del. Supr., No. 386, 1993, Moore, J. (May 5, 1994).

On November 9, 1994, defendant filed his first motion for postconviction relief. He

advanced the following grounds for relief:

- 1) Defendant was refused a chance to testify;
- 2) The authorities interviewed the victim without her mother's consent and consequently, obtained illegal evidence;
- 3) There was no medical data to support the State's contention that an unlawful sex act was committed;
- 4) Trial counsel was ineffective by not informing defendant of the above;
- 5) Trial counsel withheld evidence which would have been favorable to defendant.

The Superior Court denied this motion. State v. Morgan, Del. Super., Def. ID# 92S05729DI, Lee, J. (November 14, 1994). The Supreme Court affirmed that decision. Morgan v. State, Del. Supr., No. 473, 1994, Walsh, J. (Feb. 9, 1995).

On February 3, 1998, defendant filed his second motion for postconviction relief. Therein, he argued as follows:

- 1) Trial counsel was ineffective because he refused to allow defendant to testify and failed to notify or subpoena witnesses;
- 2) Prosecutorial misconduct/suppression of favorable evidence; i.e., the prosecution refused to disclose a tape of the victim's statement to Child Protective Services;
- 3) The Trial Court abused its discretion in denying a request for continuance;
- 4) The Trial Court abused its discretion by "neglecting to hold Pre-Trial [sic] hearing on allegation and voluntariness of permitted [sic] a false allegation unreleable [sic] untrustworthg [sic] statement to jury which violated Due Process."

The Superior Court denied the motion as procedurally barred pursuant to Super. Ct. Crim.

R. 61(i)(1), (2), (3), and (4). State v. Morgan, Del. Super., Def. ID# 92S05729DI, Lee, J. (Feb. 9, 1998). The Supreme Court affirmed this decision. Morgan v. State, Del. Supr., No. 118, 1998, Berger, J. (May 7, 1998).

Now, about ten (10) years after his conviction became final, defendant has filed his third motion for postconviction relief.

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.

(3) Procedural default. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows:

(A) Cause for relief from the procedural default and

(B) Prejudice from violation of the movant's rights.

(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.

(5) 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.

The motion is time-barred. 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 are also barred for reasons other than timeliness.¹

The following claims are barred pursuant to Super. Ct. Crim. R. 61(i)(2) because they were not asserted in the initial postconviction proceeding and/or they are barred pursuant to Super. Ct. Crim. R. 61(i)(3) because they were not asserted in the proceedings leading to the judgment of conviction, and defendant has not established that any exceptions to the bars exist:

- * Defendant was not intelligent enough to understand his Miranda rights
- * Ineffective assistance of counsel for numerous reasons
- * Prosecutorial misconduct concerning the phrasing of the charges in the indictment
- * Prosecutorial misconduct in not disclosing a tape of the victim
- * Abuse of Trial Court's discretion for not granting a continuance
- * Abuse of Trial Court's discretion for not holding a hearing "on allegations and voluntariness of permitted [sic] of false allegation's [sic] unreleable [sic] untrustworthig [sic] statement to jury which violated Due process, 14th amendment"
- * Evidentiary errors

The following claims are barred pursuant to Super. Ct. Crim. R. 61(i)(4) because they previously have been adjudicated and defendant has not shown how the reconsideration of such claims is warranted in the interest of justice:

- * No medical evidence supporting the allegation of sexual abuse and unlawful sexual intercourse

¹Defendant makes an assertion in ground five concerning a motion for postconviction relief which is unintelligible and consequently, ignored.

* Ineffective assistance of counsel for numerous asserted reasons

For the foregoing reasons, I deny defendant's pending motion.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
James Adkins, Esquire
Thomas Barnett, Esquire
Public Defender's Office