

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. Henley Graves
Resident Judge

SUSSEX COUNTY COURTHOUSE
THE CIRCLE
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GEORGETOWN, DE 19947
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June 9, 2004

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Deputy Attorney General
Department of Justice
114 East Market Street
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RE: Charles W. Simpers
Defendant ID No. #0102003252 (R1)
Civil Case No. 03I-06-098

Dear Counsel:

Mr. Simpers has filed a Motion for Postconviction Relief pursuant to Rule 61. In it he doesn't attack the conviction. He attacks his sentence. He alleges that he has been treated harshly and unfairly by the Court because of "his status as a mental health consumer". He alleges violations of equal protection and due process. As noted in my correspondence of February 26, 2004, regardless of whether Rule 61 is the appropriate procedural vehicle to bring such an attack, I shall address the Motion because Mr. Simpers makes allegations that need to be addressed. Therefore, I also waive the procedural bars of Rule 61(i) which exist because this could have been raised on direct appeal, but wasn't.

Mr. Simpers was convicted in July, 2001 of stalking, noncompliance with conditions of bond, and criminal contempt. Originally, he was charged with two counts of stalking but, at trial, I merged them into a single count as there was no reason to break a continuing course of conduct into two separate courses of conduct. Following his conviction, a PSI was ordered. Then an evaluation at DPC was ordered. He was sentenced on January 31, 2002 with the benefit of these reports.

Mr. Simpers is an individual who has problems. I've noted previously that some of his conduct and his understanding of his conduct is like that of a child. The mental health report noted that he would continue to require in-patient psychiatric treatment, and needed the establishment of an effective anti-psychotic medication regime. Mr. Simpers' diagnosis was chronic paranoid schizophrenia. At sentencing, Mr. Simpers continued to deny any wrongdoing and he denied he needed any mental health treatment.

I gave him the maximum sentence at Level 5 which was nine years. I noted my reasons. I tried

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to send Mr. Simperts a message about the seriousness of his conduct and the need for treatment. I exercised my discretion to give him the maximum in order to ensure I would have a lengthy period of time to allow for treatment and community safety. In any subsequent violation of probation hearing, if a violation is found to exist, the Court's sentencing discretion is limited by the original sentence. I told Mr. Simperts from a punishment viewpoint he'd been punished enough, but I had serious community safety concerns arising from his failure to accept that he had done anything wrong and his reluctance and sometimes refusal to be involved with mental health treatment. I directed he be held at the Forensic Psychiatric Unit of DOC or at DPC.

Then I immediately gave him a date in July, 2002 for a review of his sentence, the purpose of which was to determine if there was progress in his treatment which would permit him to return to the community. This review did not take place until February 2003 due to his appeal. The Supreme Court affirmed his conviction on January 15, 2003. Simperts v. State, Del. Supr., No. 90, 2002, Berger, J. (Jan. 15, 2003) (ORDER).

In February, 2003, the Court modified his sentence to home confinement. This process was complicated by both his reluctance to accept home confinement, and his sibling's sometimes reluctance to take him in. Mr. Simperts can be a stubborn person, who continued to deny any criminal conduct or need for treatment.

In order to address the Court's concerns of continuing mental health treatment, the Court suggested that he receive treatment provided pursuant to the civil treatment statutes. That has occurred, but Mr. Simperts still wants to do or not do what Mr. Simperts wants. He doesn't think he needs treatment and appealed the Superior Court Commissioner's decision finding that he needs treatment. 16 Del. C. §5006.

In my communications with Mr. Simperts, his previous counsel, and present counsel, I have attempted to communicate my concern that based upon his diagnosis of chronic paranoid schizophrenia he was in need of continuing mental health treatment. There has been an incredible amount of time and energy trying to find the right sentencing balance for Mr. Simperts. Mr. Simperts, through his present attorney, alleges the Court has discriminated against him because of his status as a mental health consumer. To the contrary, the correspondence of this Court and the transcripts reflect the Court's appreciation of his mental health problems and the need for treatment in order to help him and to provide community safety. I think Mr. Simperts' mental illness impedes his understanding of his need for treatment, and therefore is the basis for the present allegations against the Court.

In the present application, there has been no attempt to persuade this sentencing judge that mental health treatment is no longer necessary. Mr. Simperts complains about a lack of due process because my decisions as to his criminal sentence are trumping his due process rights arising from the treatment ordered by way of Title 16. He is correct in that the conditions of his criminal sentencing order shall control his treatment. The sentence and modifications all complied with procedural due process. In fact, the goal of his defense team was to get him out of Level 5 and back into the community with mental health treatment in the community. Now, Mr. Simperts, with new counsel,

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wants to shed the necessity of being involved in mental health treatment. I have said that Mr. Simperts could win the battle and lose the war. If he doesn't stay in the present program, then my alternatives might be more onerous. I hope someone can explain this to him.

Mr. Simperts will continue to participate in all aspects of his mental health treatment program, regardless of whether it be on the civil side or the criminal side of the coin. If he refuses to do so, the Court will have to consider whether or not he is in violation of probation and, if so, the consequences.

Mr. Simperts and his counsel may disagree with my decisions in his case, but allegations that the Court has violated his equal protection or treated him harshly because of his mental illness, in the light of this record, has no factual basis. Of course, this is my opinion and Mr. Simperts may desire to have it reviewed through the appeal process.

The Motion for Postconviction Relief is denied. This order moots the appeal of the Commissioner's Order in Case No. 03I-06-098 as the criminal sentencing order requires mental health treatment.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary