

I.

After a jury trial, Defendant was found guilty on July 25, 2000 of Reckless Endangering First Degree (three counts) and related charges, including weapons offenses. The State filed a motion to declare Defendant a habitual offender on July 28, 2000, which the court granted. And on December 1, 2000, the court sentenced Defendant to a long, prison term, including many years of mandatory imprisonment.

Defendant filed a direct appeal to Delaware's Supreme Court, but his conviction was affirmed and the mandate was received on March 8, 2002. Defendant filed this, his first motion for postconviction relief, on November 19, 2004.

II.

Defendant was obliged to raise during his direct appeal the claims he is now pursuing, which concern his competence to stand trial and prosecutorial misconduct. Rule 61(i)(3), mentioned above, provides:

Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction . . . is thereafter barred.¹

Although the Rule specifically addresses grounds for relief that were not asserted prior to conviction, it is well-settled that the Rule also embraces claims that should

¹ Del. Super. Ct. Crim. R. 61(i)(3).

have been raised on appeal, but were not.² The Rule's purpose is to prevent fragmented appeals. Rule 61 contemplates one direct appeal and one motion for postconviction relief. The Rule further contemplates that postconviction relief proceedings will not cover claims that should have been raised on appeal.

The court also finds that considering Defendant's claims is not warranted in the interest of justice. The claims were addressed directly in the proceedings leading to Defendant's conviction and sentencing.

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Specifically, almost immediately after Defendant was indicted on December 21, 1998, the court granted his counsel's motion for a psychiatric examination. Defendant was examined on February 1, 1999 and the examination report was filed under seal on March 9, 1999. A further examination was conducted on April 26, 1999. At Defendant's counsel's request, an additional evaluation was conducted by a privately retained psychologist and an Addendum to Psychological Evaluation was filed on May 31, 1999. As mentioned, Defendant was convicted on July 25, 2000. While Defendant was awaiting sentencing, the court, *sua sponte*, ordered that Defendant undergo another psychiatric evaluation. The examination happened at the Delaware Psychiatric Center on August 9, 2000 and the evaluation

² *Flamer v. State*, 585 A.2d 736, 747 (Del. 1990); *Johnson v. State*, 460 A.2d 539 (Del 1983).

report was submitted under transmittal letter dated August 30, 2000.

In summary, the various evaluation reports differ as to the personality disorders from which Defendant suffers - histrionic versus anti-social. The report from Dr. Turner, on which Defendant currently relies, speaks to Defendant's need for treatment. But that treatment is associated with Defendant's histrionic personality disorder. Dr. Turner does not opine that Defendant's psychological problems rose to the point where Defendant was incompetent. In fact, no mental health professional opines that Defendant was not competent to stand trial. Again, three evaluations took place in the year preceding trial and the final evaluation happened only days after Defendant's conviction.³

The court continues to recognize that Defendant's personality disorders probably contributed significantly to his foolish decision to represent himself. (The self-representation issue has been addressed in previous orders.) And they probably help account for misjudgments during Defendant's trial. Nevertheless, Defendant emphatically insisted that he would represent himself at trial. His demand followed a history of problems with several privately-retained and court-appointed attorneys. Based on its extensive dealings with Defendant before and during trial, the court has

³ *Williams v. State*, 378 A.2d 117 (Del. 1977), *cert denied*, *Williams v. Delaware*, 463 U.S. 908 (1978) (Approving retrospective competency determinations.).

no doubt that if Defendant's motion for self-representation had been denied, Defendant would have acted out in a way that would have interfered with the trial or precipitated his removal from the courtroom.

The court also recalls that although he made bad decisions before and during trial, Defendant appeared to be keenly aware of his circumstances, what was going on and what he was facing. He filed serial pre-trial motions and massive subpoena requests. He developed a line of defense and he argued the evidence. Again, Defendant's efforts were hampered by his personality disorders and lack of legal training. The court, however, called for the post-trial evaluation merely as a precaution and to assist at sentencing. The court was not surprised by the report. As the experts agree, Defendant is a difficult person. He is neither mentally ill, nor mentally incompetent.

In any event, the interests of justice do not require that the court consider Defendant's claim that his due process rights were violated when the court failed to hold a competency hearing before trial. As a matter of fact, through privately obtained and court-ordered evaluations, Defendant received several timely, formal, competency evaluations before and after his trial. Despite Defendant's current claim to the contrary, none of the psychological reports provided a basis for a formal, competency hearing - before, during or after trial.

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Defendant's second ground for postconviction relief, prosecutorial misconduct, also was extensively addressed before and during trial. The claim primarily concerns a lost surveillance video tape of the hotel's lobby where the crimes occurred. Again, the missing surveillance tape is discussed in the October 27, 2000 order denying Defendant's motion for a new trial and on the record. Were the court's decision incorrect, which it was not, Defendant should have challenged the decision during his direct appeal. The court continues to rely on the extensive record created about this issue during and after Defendant's trial.

III.

For the foregoing reasons, after preliminary review, Defendant's November 19, 2004 Motion for Postconviction Relief is summarily ***DISMISSED***. The Prothonotary shall notify Defendant.

IT IS SO ORDERED.

Judge

oc: Prothonotary
Dean DelCollo, Esquire
Kevin O'Connell, Esquire
Paul Wallace, Deputy Attorney General
Andre Thomas, DCC