

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUPERIOR COURTHOUSE
GEORGETOWN, DE 19947

April 11, 2005

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

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

DATE SUBMITTED: February 16, 2005

Dear Mr. Dombrosky:

Pending before the Court is the fourth motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61") which defendant George J. Dombrosky ("defendant") has filed. This is my decision denying the motion, which was filed on February 14, 2005.

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 appeal therefrom. Defendant's three postconviction motions were denied. State v. Dombrosky, Del. Super., Def. ID# 9708004381, Lee, J. (August 10, 1999), app. dismiss., 741 A.2d 1026 (Del. 1999); State v. Dombrosky, Del. Super., Def. ID# 9708004381, Stokes, J. (Jan. 14, 2002); and State v. Dombrosky, Del. Super., Def. ID# 9708004381, Stokes, J. (July 1, 2004).

In this fourth motion, defendant implores the Court to dismiss the rape charge because the medical evidence shows there was no rape and to drop his murder charge to that of manslaughter because there was no evidence of an intent to kill. He argues there are extraordinary and/or exceptional circumstances. The circumstances he references are the lack of evidence showing rape, his substance abuse problems, his lack of a criminal history, his low I.Q., and his attorney's acts of lying to him and scaring him into taking the plea.

The procedural bars of Rule 61(i) require this Court to deny his motion.¹ The motion is time-barred. Rule 61(i)(1). The repetitive arguments are barred. Rule 61(i)(2). The previously

¹In Superior Court Criminal Rule 61(i), it is provided as follows:

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 or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than three years after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.

(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.

adjudicated grounds are barred. Rule 61(i)(4). Defendant has not presented any reason why his arguments should be reconsidered in the interest of justice, nor has he argued that this Court lacked jurisdiction or 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. Because defendant has not overcome the procedural bars to this Court's consideration of his Rule 61 motion, the motion must be denied.

For the foregoing reasons, the 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