



***State v. Detlef F. Hartmann***

**I.D. No. 9912000027**

February 15, 2005

This 15th day of February, 2005, upon consideration of Defendant's Motion for Reconsideration of Commissioner's Order, it appears to the Court that:

1. Detlef Hartman ("Defendant") pled guilty to one count of second degree unlawful sexual intercourse and two counts of unlawful sexual contact in March of 2001. In April 2004, Defendant filed a motion for postconviction relief. Defendant subsequently filed a motion to stay his postconviction relief proceedings until the Federal District Court for Delaware addressed his pending Petition for Habeas Corpus. In September 2004, Defendant filed a motion for appointment of counsel for the evidentiary hearing pertaining to his pending motion to stay and also filed an addition to his motion to stay. On September 24, 2004, the Commissioner denied Defendant's motion to stay during the motion hearing and subsequently denied his request to have counsel appointed for these proceedings. On October 8, 2004, Defendant filed this Motion for Reconsideration of the Commissioner's Order.

2. Pursuant to Superior Court Criminal Rule 62, a judge will reconsider any hearing or pretrial matter "only where it has been shown on the record that the Commissioner's order is based upon findings of fact that are clearly erroneous, or is contrary to law, or an abuse of discretion."<sup>1</sup> Defendant has requested this Court to reconsider the Commissioner's order denying his motion to stay the proceedings. Defendant initially requested that his motion for postconviction relief be stayed by this Court until his pending Petition for Habeas Corpus was decided by the Federal District Court. The State opposed Defendant's motion to stay and argued that a stay

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<sup>1</sup> Super. Ct. Crim. R. 62 (a)(4)(iv).

***State v. Detlef F. Hartmann***

**I.D. No. 9912000027**

February 15, 2005

would be inappropriate based upon Defendant's marginal chance of success in Federal Court as a result of his failure to exhaust all state remedies. The Commissioner denied Defendant's motion to stay and Defendant filed this motion for reconsideration on October 8, 2004. However, on November 16, 2004, the Federal District Court adjudicated Defendant's pending habeas petition concluding that such petition was barred by the one-year period of limitations prescribed in 28 U.S.C. § 2244 (d)(1).<sup>2</sup> Because Defendant's habeas petition has since been addressed by the Federal District Court, Defendant's Motion for Reconsideration of the Commissioner's Order denying his motion to stay the postconviction relief proceedings is hereby *moot*.<sup>3</sup>

3. Defendant also seeks reconsideration of the Commissioner's order that denied his request to have counsel appointed for his evidentiary hearing pertaining to his motion to stay. The Commissioner noted that Defendant does not have a constitutional right to have court-appointed counsel during postconviction proceedings and denied Defendant's request concluding that good cause had not been

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<sup>2</sup> *Hartman v. Carroll*, D. Del., C.A. No. 03-796-JJF, Farnan, J. (November 16, 2004) (Mem. Op.).

<sup>3</sup> Although Defendant contends that his motion to stay the proceedings is not moot because he has appealed the adverse decision to the Third Circuit Court of Appeals, the District Court has declined to issue a certificate of appealability. More important, Defendant's motion to stay only requested that the proceedings be stayed until the Federal District Court addressed his habeas petition.

***State v. Detlef F. Hartmann***

**I.D. No. 9912000027**

February 15, 2005

shown.<sup>4</sup> Defendant contends that the Commissioner erred as matter of law and argues that he does have a constitutional right to counsel at this stage of the proceedings. As discussed above, Defendant's motion to stay the proceedings is moot. Logically, Defendant's request to have counsel appointed for the evidentiary hearing to determine whether his motion to stay the proceedings should be granted is likewise moot. Nevertheless, upon consideration of the ambiguous nature of Defendant's motion, this Court will resolve Defendant's motion under the assumption that a live controversy exists.<sup>5</sup>

While an indigent defendant does have a constitutional right to representation on the first direct appeal, Defendant's motion to stay the postconviction relief proceedings and his postconviction relief proceedings themselves are collateral attacks on his conviction and not direct appeals.<sup>6</sup> Defendant pled guilty in March 2001 to one count of second degree unlawful sexual intercourse and two counts of unlawful sexual contact and the time period for commencing a first direct appeal has

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<sup>4</sup> Super. Ct. Crim. R. 61 (e)(1) provides: "*Appointment of Counsel.* (1) Order of appointment. The court will appoint counsel for an indigent movant only in the exercise of discretion and for good cause shown, but not otherwise...."

<sup>5</sup> Defendant filed a previous motion for appointment of counsel for the post-conviction relief proceedings that was denied in May of 2004. Although Defendant's second motion for appointment of counsel is ambiguous as to whether he has requested appointment of counsel again for the entire post-conviction relief proceedings or only for the evidentiary hearing concerning his motion to have the proceedings stayed, this Court will interpret such motion as requesting counsel for the entire post-conviction relief proceedings. Otherwise, Defendant's motion would be dismissed as moot.

<sup>6</sup> *Douglas v. California*, 372 U.S. 353, 357 (1963).

***State v. Detlef F. Hartmann***

**I.D. No. 9912000027**

February 15, 2005

long since expired. No constitutional right to court-appointed counsel exists at postconviction relief proceedings beyond the first direct appeal and the Court has broad discretion in determining whether counsel should be appointed at such proceedings.<sup>7</sup> The record before this Court is void of any evidence indicating that the Commissioner abused her discretion in denying Defendant's motion for appointment of counsel or based her determination upon findings of facts that are clearly erroneous. Defendant's unsubstantiated allegations questioning the impartiality of the Commissioner are conclusory and do not provide any meritorious legal basis for this Court to grant Defendant's motion for reconsideration. Accordingly, Defendant's Motion for Reconsideration of the Commissioner's Order denying his request for court-appointed counsel is hereby *denied*.

In conclusion, Defendant's Motion for Reconsideration of the Commissioner's Order that denied his motion to stay the postconviction relief proceedings is hereby dismissed as *moot* and Defendant's Motion for Reconsideration of the Commissioner's Order that denied his motion for appointment of counsel is hereby *denied*. IT IS SO ORDERED.

/s/ William L. Witham, Jr.

R.J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

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<sup>7</sup> *Brokenbrough v. State*, 560 A.2d 489 (Del. 1989).