

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

May 18, 2005

N440
Jackie E. Jackson

Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: Defendant ID No. 0107021899(R-2)

Dear Mr. Jackson:

On May 9, 2005, the Court received your Motion for Postconviction Relief pursuant to Superior Court Rule 61. In same you also request an extension to file a follow-up memorandum in thirty (30) days. I am denying your request for an extension of time because the Motion for Postconviction Relief is procedurally barred under Rule 61(i).

In January of 2002, you were convicted of burglary in the 2nd degree, conspiracy in the 2nd degree, theft, receiving stolen property, unlawful use of credit card, and criminal impersonation. The Supreme Court affirmed your conviction on direct appeal. *Jackson v. State*, 2003 WL161250 (Del. Supr.).

In May 2003, you filed a Motion for Postconviction Relief. The claims you raised were as follows: ineffective assistance of counsel; violation of your constitutional right of confrontation; denial of due process; denial of your motion for continuance; denial of your motion to dismiss two jurors; violation of your constitutional rights to counsel; deficient jury instructions on reasonable doubt; *Brady* violations; and prosecutorial misconduct during closing argument. This Court denied your request for relief pursuant to this Motion and this Court's decision was affirmed by the Delaware Supreme Court on February 17, 2005. *Jackson v. State of Delaware*, 869 A.2d 327 (Table), 2005 WL 528673 (Del. Supr.). .

In your present Motion for Postconviction Relief, you allege the Court abused its discretion concerning the admission of other crime evidence; that you were denied the right of confrontation; and that there was prosecutorial misconduct in the closing argument.

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You claim that the Court should hear these arguments because “the issue of other crime evidence previously raised resulted in a miscarriage of justice [and] reconsideration of this claim is warranted in the interest of justice”.

This Court's decision of October 31, 2003 denying your first Motion for Postconviction Relief was comprehensive and I incorporate the same. See *State v. Jackson*, 2003 WL 22833992 (Del. Super.).

Of note is the fact that you chose to represent yourself on the morning of trial. You were *pro se* in your first Motion for Postconviction Relief. I ruled that because you were *pro se*, the problems and consequences of issues not being raised at trial and on appeal are your fault. Specifically, Rule 61(i)(3) bars you from attempting to litigate those issues which could have been presented at trial and presented on appeal. Your attempt to address the procedural bar by stating “the issue of other crime evidence previously raised resulted in a miscarriage of justice”, does not address the procedural bar at all. It just hammers home another procedural bar, i.e., that of prior adjudication. This Court specifically ruled on the confrontation issue and the prosecutorial misconduct in closing argument issues. Those claims are also barred pursuant to Rule 61(i)(4). Therefore, further argument on these grounds is unnecessary.

The “miscarriage of justice” exception to the application of procedural bars is not to be applied broadly as you and many others before you would like. It is not to be interpreted as “I was unfairly convicted and desire another chance”. It is interpreted very narrowly. *State v. McKamey*, 2003 WL 22852614 (Del. Super.).

You had a fair trial and your convictions were confirmed. You have had a fair opportunity to present numerous postconviction grounds in your first application. This Court has ruled and you don't have the right to continue to try to beat down the door.

Your second Motion for Postconviction Relief is procedurally barred and is denied.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary

