

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

**STATE OF DELAWARE**

v.

**DERRIS S. GIBSON**

Defendant.

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ID No. 93004839DI

Submitted: March 1, 2005

Decided: April 5, 2005

**MEMORANDUM ORDER**

On this 5th day of April, 2005, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the court that:

1. Derris S. Gibson ("Gibson") has filed a Motion for Postconviction Relief *pro se*, pursuant to Superior Court Criminal Rule 61. For the reasons set forth below, Gibson's Motion is **DENIED**.

2. In July 1993, a jury trial was held in New Castle County Superior Court and Gibson was found guilty of Attempted Murder in the First Degree, Robbery First Degree, Possession of a Deadly Weapon During Commission of a Felony (two counts), and Criminal Impersonation. On July 16, 1993, Gibson was sentenced to life plus 35 years in prison.

3. After two vacations and reimpositions of his sentence to allow Gibson the opportunity to file an appeal, Gibson filed a direct appeal to the Supreme Court of Delaware who affirmed the judgments of the Superior Court on February 16, 1996.

4. On March 1, 2004, Gibson filed a Motion for Postconviction Relief asserting ineffective assistance of counsel and newly discovered evidence concerning testimony of State witnesses. This court denied relief on procedural grounds on June 29, 2004. The Supreme Court affirmed on January 19, 2005.

5. On March 1, 2005, Gibson filed this Motion for Postconviction Relief and asserted the following grounds for relief:

- (a) newly discovered evidence concerning testimony of State witnesses;
- (b) incorrect sentencing dates violating his right to challenge his conviction.

6. Before addressing the merits of any claims raised in a motion seeking postconviction relief, the court must first apply the rules governing the procedural requirements of Superior Court Criminal Rule 61(i).<sup>1</sup>

7. Superior Court Criminal Rule 61(i)(1) provides that “a motion for postconviction relief may not be filed more than three years after the judgment of conviction is final. . .” Defendant argues that this court was incorrect in finding that his sentence became final on June 9, 2000 after being affirmed by the Supreme

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<sup>1</sup> *Stone v. State*, 690 A.2d 924, 925 (Del. 1996) (internal citation omitted).

Court. Gibson is correct that his sentence became final in 1996 rather than in 2000; however, in effect, this pushes his time to file for Postconviction relief back to 1999. Therefore, the three-year limit in this case began running February 16, 1996 when the Delaware Supreme Court affirmed the ruling of the Superior Court and, therefore, expired February 16, 1999.

8. This time bar may be inapplicable if the fundamental fairness of the proceeding is at issue.<sup>2</sup> The “fundamental fairness” exception is a narrow one and is applied only in limited circumstances.<sup>3</sup>

9. Gibson’s Motion for Postconviction relief based upon his desire to present new evidence, in addition to being time-barred, is also repetitious and will not be reviewed by this court.

10. The court, therefore, concludes that Gibson has failed to present evidence that would support an exception to the procedural bar of Rule 61(i)(1) with respect to his first ground for postconviction relief.

11. The court, therefore, **DENIES** Gibson’s Motion for Postconviction Relief.

**IT IS SO ORDERED.**

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Calvin L. Scott, Jr.  
Superior Court Judge

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<sup>2</sup> Super Ct. Crim. R. 61(i)(5).

<sup>3</sup> *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996); *see also State v. Morales*, 2001 WL 1486169 at \*2 (Del. Super.), *aff’d* 791 A.2d 751 (Del. 2002).