

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

STATE OF DELAWARE)	
)	
v.)	I.D. # 006436DI
)	
LARRY D. NAVE)	
)	
Defendant.)	

Date Submitted: April 25, 2005
Date Decided: July 29, 2005

ORDER

Upon Defendant's *Pro Se* Motion for Post-Conviction Relief – SUMMARILY DISMISSED

William L. George, Esquire, Department of Justice, Carvel State Building, 820 North French Street, Wilmington, Delaware 19801, for the State of Delaware.

Larry D. Nave, Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware 19977, Defendant, *pro se*.

JURDEN, J.

Before the Court is a motion for postconviction relief filed by Larry D. Nave (hereinafter the “Defendant”) pursuant to Superior Court Criminal Rule 61. For the reasons that follow, the Defendant's motion is **SUMMARILY DISMISSED**.

1. In 1983, the Defendant pled guilty to Rape Second degree, Conspiracy Second degree, Burglary First degree, and Robbery First degree. For the Rape Second charge he was sentenced to twenty years, for the Conspiracy Second charge he was sentenced to five years, for the Burglary First charge he was sentenced to ten years, and for the Robbery First charge he was sentenced to ten years. These sentences are to be served consecutively. On March 10, 1988, the Defendant filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61. On April 8, 1988, this Court denied the motion. On June 12, 1991, the Defendant filed a second motion for postconviction relief. On July 24, 1991, this Court dismissed the motion. The Defendant appealed and on December 6, 1991, the Delaware Supreme Court affirmed. On April 25, 2005, the Defendant filed the present motion for postconviction relief.

2. In a motion for postconviction relief under Superior Court Criminal Rule 61, the Court is to apply the rules governing procedural requirements before addressing substantive claims.¹ Rule 61(i)(1) specifically bars consideration of any claim that has been “filed more than three years after the judgement of conviction is final.”² Rule 61(i)(2) specifically bars consideration of any claim that “was not asserted in a prior postconviction proceeding” unless

¹ *Younger v. State*, 580 A.2d 552, 554 (Del. Super. Ct. 1990).

² *See* DEL. SUPER. CT. CRIM. R. 61(i)(1). Rule 61 was amended to bar all claims filed more than one year, rather than three years, after the judgement of conviction is final. This amendment is in effect for all cases in which the judgement of conviction became final after July 1, 2005.

reconsideration of the claim is warranted in the “interest[s] of justice.”³

3. In this motion, the Defendant raises the claims that his guilty plea was a result of coercion and threats, and that the Attorney General violated his plea agreement. Because more than three years have passed since the judgement of conviction in this case, the current motion for postconviction relief is time-barred.⁴ In addition, the Defendant has not offered any new or compelling evidence different from what was discussed in his two previous motions, which were denied and dismissed by the Court on April 8, 1988, and July 24, 1991, respectively. Since the Defendant has also failed to offer any evidence that the “interest of justice” exception to Rule 61(i)(2) is applicable, the current motion for postconviction relief is procedurally barred as a repetitive motion. Moreover, the Delaware Supreme Court also considered these claims in its November 18, 1991 Order affirming the Superior Court’s Order.⁵ As a result of these procedural bars, the Court will not address these claims and each of the claims is Summarily Dismissed.⁶

³ See DEL. SUPER. CT. CRIM. R. 61(i)(4).

⁴ See D.I. 30, 39.

⁵ See *Nave v. State*, 604 A.2d 418 (Del. 1991)..

⁶ See DEL. SUPER. CT. CRIM. R. 61(d)(4) (“If it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified.”).

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For the foregoing reasons, the Defendant's Motion for Postconviction Relief is
SUMMARILY DISMISSED.

IT IS SO ORDERED.

Jan R. Jurden, Judge