

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

STATE OF DELAWARE)	
)	
v.)	I.D. # 87001256DI
)	
CARMELO J. CLAUDIO)	
)	
Defendant.)	

Date Submitted: June 29, 2005
Date Decided: August 4, 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.

Carmelo J. Claudio, Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware 19977, Defendant, *pro se*.

JURDEN, J.

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

1. In 1987, the Defendant was found guilty of Murder First Degree, Attempted Murder First Degree, two counts of Conspiracy First Degree, two counts of Robbery First Degree, and four counts of Possession of a Deadly Weapon During the Commission of a Felony. For the Murder First charge he was sentenced to life in prison, for the Attempted Murder First charge he was sentenced to life in prison, for the first count of Conspiracy First he was sentenced to two years, for the second count of Conspiracy First he was sentenced to five years, for the first count of Robbery First he was sentenced to ten years, for the second count of Robbery First he was sentenced to eight years, and for each of the four counts of Possession of a Deadly Weapon During the Commission of a Felony he was sentenced to five years. These sentences are to be served consecutively. On August 9, 2001, the Defendant filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61. On December 17, 2001, this Court denied the motion. On February 26, 2002, Defendant filed an appeal, and on March 28, 2002 the Delaware Supreme Court affirmed. On August 21, 2002, the Defendant filed a second motion for postconviction relief. On January 21, 2003, this Court denied the motion. On June 25, 2003 the Defendant appealed, and on September 15, 2003, the Delaware Supreme Court affirmed. On June 29, 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)(2) specifically bars consideration of any claim that “was not asserted in a prior postconviction proceeding” unless reconsideration of the claim is warranted in the “interest[s] of justice.”² Rule 61(i)(4) specifically bars consideration of any ground for relief “that was formerly adjudicated, whether in the proceedings leading to the judgement of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding” unless reconsideration of the claim is warranted in the “interest[s] of justice.”³

3. In this motion, the Defendant claims that his Fifth and Fourteenth Amendment rights were violated when additional charges were added to the indictment, that he was prosecuted with an illegal and unconstitutional indictment, that his constitutional protection from double jeopardy was violated by the mention of knives in the indictment, that he was denied a fair and impartial trial by jury because of the use of the term “weapons” throughout the proceedings, that there was insufficient evidence to warrant conviction for conspiracy, that there was prosecutorial misconduct, that the Superior Court lacked jurisdiction, that he was denied access to critical evidence, that the lack of technology in DNA testing at the time of his trial prevented the testing of evidence that would have resulted in an acquittal, that he was denied rights to fundamental fairness and equal protection by the trial court, that he had ineffective assistance of counsel, and that he was unfairly denied postconviction DNA testing. However, the Defendant has not offered any new or compelling evidence different from what was discussed in

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

² *See Del. Super. Ct. Crim. R.* 61(i)(2).

³ *See Del. Super. Ct. Crim. R.* 61(i)(4).

his two previous motions, which were denied by the Court on December 17, 2001, and July 24, 1991, respectively. Since the Defendant has also failed to offered any evidence that his claims should be reconsidered under the “interest of justice” exception to Rule 61(i)(2), counts three through eleven of the current motion for postconviction relief are procedurally barred as a repetitive motion. In addition, the remaining five grounds of the current motion for postconviction relief were previously adjudicated and are, therefore, ineligible for substantive review under Rule 61(i)(4). As a result of these procedural bars, the Court will not address these claims and each of the claims is Summarily Dismissed.⁴

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

IT IS SO ORDERED.

Jan R. Jurden, Judge

⁴ *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.”).