

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

STATE OF DELAWARE)	
)	
)	
)	I.D. No. 0303003566
v.)	
)	
BRYAN A. JONES)	
)	
Defendant.)	
)	

Submitted: June 24, 2005
Decided: September 8, 2005

On Defendant's Motion for Postconviction Relief
SUMMARILY DISMISSED.

ORDER

This 8th day of September 2005, upon consideration of this Motion for Postconviction Relief filed by Bryan A. Jones ("Defendant" or "Petitioner"), it appears to the Court that:

1. Defendant was found guilty after a jury trial of one count of Robbery in the First Degree on August 21, 2003. Defendant was sentenced on November 7, 2003 to eight years at Level V, suspended after six years, and

followed by two years at decreasing levels of supervision. The Delaware Supreme Court affirmed Defendant's sentence and conviction by Order, on May 28, 2004.¹ Defendant filed a Rule 61 Motion for Postconviction Relief on March 18, 2005. Defendant's former trial counsel, James A. Bayard, Jr., has filed a letter responding to Petitioner's claim of ineffective assistance of counsel, and that the state has submitted its opposition to the motion.

2. Defendant's three claims for postconviction relief are recited below *in toto*:

Ground one: Suppression of favorable evidence by prosecution.
Supporting facts: Prosecution withheld Rule 16 discovery materials upon request with due diligence in the process suppressed impeachment evidence (Police Memorandum) which statements are [sic] inconsistent with prosecutions' witness trial testimony which case solely relied on, prejudicing me a right to a fair trial because jury had a right to know of impeaching statements during trial stage.

Ground two: Suppression of favorable evidence by prosecution
Supporting facts: Prosecution did not inform anyone of his witness' committed [sic] perjury after having knowledge of witness' previous description of events in Police Memorandum, thus willingly let his witness and led his witness to committing [sic] perjury by making false and inconsistent statements in the witness' testimony.

Ground three: Ineffective assistance counsel [sic]
Supporting facts: Counsel made unprofessional error by not seeking continuance until all relevant materials to trial were in custody of defense for proper assessment and substantial investigation, thus making defense strategy unsound and not

¹ *Jones v. State*, Del. Supr., 2004 WL 1280196.

within range of competence demanded of attorney in criminal cases.²

In response to why any of the above grounds were not previously raised,

Defendant added:

[t]he synopsis of grounds two and three were not previously raised due to the fact that the information did not meet my attention until after trial and direct appeal stage. Ground One was explained on direct appeal, but due to me lacking [sic] literacy in law I neglected to add Rule 16 infraction and my denial of discovery materials from prosecution.³

3. When considering a motion for postconviction relief, the Court must first apply the procedural bars of Super. Ct. Crim. R. 61.⁴ If a procedural bar exists, then the claim is barred and the Court should not consider the merits of the postconviction claim.⁵ If no procedural bar exists, settled Delaware law holds that the claim may nonetheless be summarily dismissed if it is based on completely conclusory grounds.⁶

² Defendant's Motion for Postconviction Relief at 3.

³ *Id.*

⁴ *Bailey v. State*, Del. Supr., 588 A.2d 1121, 1127 (1991); *Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990)(citing *Harris v. Reed*, 489 U.S. 255, 265 (1989)).

⁵ *State v. Gattis*, Del. Supr., Cr. A. No. IN90-05-1017, Barron, J. (Dec. 28, 1995)(citing *Younger v. State*, 580 A.2d at 554; *Saunders v. State*, Del. Supr., No. 185, 1994, Walsh, J. (Jan. 13, 1995)(Order); *Hicks v. State*, Del. Supr., No. 417, 1991, Walsh, J. (May 5, 1992)(Order)).

⁶ Super. Ct. Crim. R. 61(d)(4); *See State v. Brittingham*, Del. Super., Cr. A. No. IN91-01-1009-R1, Barron, J. (Dec. 29, 1994)(Order) at 3 (citing *Younger v. State*, 580 A.2d at 556)(holding that conclusory allegations are legally insufficient to prove ineffective

4. Ground One of Defendant's Motion for Postconviction Relief is procedurally barred because it was formerly adjudicated. Rule 61(i)(4) provides that "[a]ny ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, [or] in an appeal ... is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice."⁷ The "interest of justice" exception has been "narrowly defined to require the movant to show that the trial court lacked the authority to convict or punish [the movant]."⁸ To prevail under this exception, "the movant must show that subsequent legal developments have revealed that the trial court lacked the aforementioned authority to convict or punish."⁹ Defendant has not provided evidence of a subsequent legal development that shows that the trial court lacked the authority to convict Defendant. The purported inconsistency of statements made before and at trial by the victim upon which the Defendant relies is not such a legal

assistance of counsel); *Jordan v. State*, Del. Supr., No. 270, 1994, Walsh, J. (Aug. 25, 1994)(Order)).

⁷ Super. Ct. Crim. R. 61(i)(4).

⁸ *State v. McKamey*, 2003 WL 22852614, at *4 (Del. Super. Ct.)(quoting *State v. Wright*, 653 A.2d 288, 298 (Del. Super. Ct. 1994)(citing *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990)).

⁹ *State v. McKamey*, 2003 WL 22852614, at *4 (Del. Super. Ct.)(citing *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990)(citing comparatively *Davis v. United States*, 417 U.S. 333, 342 (1974)).

development; instead, it is an issue for the jury to resolve.¹⁰ Thus, Ground One of Defendant's Motion fails to trigger the "interest of justice" exception of Rule 61(i)(4) and is barred on the basis that it was formerly adjudicated.

5. No procedural bar, however, exists under Rule 61(i) as to both Grounds Two and Three. Instead, these two grounds may be summarily dismissed on the basis that they are completely "conclusory." Rule 61(d)(4) provides that "[i]f 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."¹¹ Under Delaware law, claims for postconviction relief that are completely conclusory in nature may be summarily dismissed on that basis.¹² Here, Defendant alleges (1) that the prosecution knowingly introduced a false statement at trial that was inconsistent with a previous statement made by the victim, which amounted to perjury, and (2) that Defendant's counsel was ineffective. However, Defendant does not provide any facts to support either of those allegations. The mere allegation that the witness gave

¹⁰ *Jones v. State*, Del. Supr., 2004 WL 1280196 at *2.

¹¹ Super. Ct. Crim. R. 61(d)(4).

¹² See *State v. Brittingham*, Del. Super., Cr. A. No. IN91-01-1009-R1, Barron, J. (Dec. 29, 1994)(Order) at 3 (citing *Younger v. State*, 580 A.2d at 556)(holding that conclusory allegations are legally insufficient to prove ineffective assistance of counsel); *Jordan v.*

testimony inconsistent with a prior statement does not necessarily amount to perjury. Further, Defendant claims that counsel was ineffective in failing to request a continuance until “relevant materials” were in the custody of the defense. However, Defendant does not identify which materials he is referring to, or how they are relevant. Thus, the claims for relief are completely conclusory.

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

IT IS SO ORDERED.

cc: Prothonotary
Mark B. Chernev, Esquire, Deputy Attorney General
Bryan A. Jones
Office of the Public Defender
Investigative Services

State, Del. Supr., No. 270, 1994, Walsh, J. (Aug. 25, 1994)(Order)).