

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

STATE OF DELAWARE)
)
 v.)
) ID No. 0108016062
JAMARR K. KENNEY,)
)
)
 Defendant.)

Submitted: February 2, 2006
Decided: April 10, 2006

ORDER

UPON DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF

DENIED

Upon review of Movant Jamarr K. Kenney’s (“Defendant”) Motion for Postconviction Relief and the record, it appears to the Court that:

1. On January 31, 2003, Defendant pled guilty. Effective February 20, 2002, Defendant was sentenced to 10 years at level 5 (suspended after 5 years) for Robbery First Degree; 10 years at level V for Manslaughter; and 2 years at level 5 (suspended immediately) for Conspiracy Second Degree. On February 19, 2004, Defendant filed a *pro se* motion for Correction of an Illegal Sentence, which was denied on March 29, 2004.

2. The current *pro se* Motion for Postconviction Relief was filed on February 1, 2006. Defendant appears to argue: (i) that his due process rights were violated because a factual determination was required before imposition of a mandatory sentence; (ii) that 11 *Del. C.* §4204(k) is unconstitutional because it constitutes double jeopardy; (iii) that section 4204(k) should have been included in Defendant's plea agreement; (iv) that Defendant's prior juvenile conviction should not have been included in determining the sentence; (v) that any factors supporting enhanced sentencing must be found by a jury beyond a reasonable doubt; (vi) that exceptional circumstances supporting sentencing outside the presumptive guidelines must be set forth in the sentencing order; (vii) that a sentence in excess of the presumptive sentence is cruel and unusual punishment; and (viii) that Defendant requests release so that he can be with his family.

3. In evaluating a postconviction relief motion, the Court must first ascertain if any procedural bars of Superior Court Criminal Rule 61(i) apply.¹ If a procedural bar is found to exist, the Court should refrain from considering the merits of the individual claims. This Court will not address claims for postconviction relief that are conclusory and unsubstantiated.² Pursuant to Rule

¹ See *Younger v. State*, 580 A.2d 552, 554 (Del. 1990); Super. Ct. Civ. R. 61(i).

² See *Younger*, 580 A.2d at 555; *State v. Conlow*, Del. Super., Cr. A. No. IN78-09-

(continued...)

61(a), a motion for postconviction relief must be based on "a sufficient factual and legal basis." In addition, pursuant to Rule 61(b)(2), "[t]he motion shall specify all the grounds for relief which are available to movant ..., and shall set forth in summary form the facts supporting each of the grounds thus specified." Any ground for relief not asserted in a prior postconviction relief motion is thereafter barred unless consideration of the claim is necessary in the interest of justice.³ Similarly, grounds for relief not asserted in the proceedings leading to the judgment of conviction are thereafter barred, unless the movant demonstrates: (1) cause for the procedural default; and (2) prejudice from the violation of movant's rights.⁴ Any formerly-adjudicated ground for relief, whether in a proceeding leading to the judgment of conviction, in an appeal, or in a postconviction proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.⁵

4. Under Rule 61(i)(1), a motion may not be filed more than one year after judgment of conviction is final or one year after a newly-discovered,

²(...continued)
0985R1, Herlihy, J. (Oct. 5, 1990) at 5; *State v. Gallo*, Del. Super., Cr. A. No. IN87-03-0589-0594, Gebelein, J. (Sept. 2, 1988) at 10.

³Del. Super. Ct. Crim. R. 61(i)(2).

⁴Del. Super. Ct. Crim. R. 61(i)(3).

⁵Del. Super. Ct. Crim. R. 61(i)(4).

retroactively-applicable right is recognized by the United States Supreme Court or the Delaware Supreme Court. If defendant does not take a direct appeal, a conviction is final for purposes of postconviction review when the time for direct appeal has expired (30 days after sentencing). Additionally, any ground for relief asserted in a previous motion is barred by Rule 61(i)(4)

5. Defendant's motion for postconviction relief must be denied as it is procedurally barred pursuant to Rules 61(i)(1) and (4). Because Defendant was sentenced on March 21, 2003, his present postconviction relief motion is time barred by Rule 61(i)(1). Further, because Defendant's grounds for relief in this postconviction relief motion are the same as the grounds raised in the earlier motion for correction of an illegal sentence, his present motion is barred by Rule 61(i)(4). "Neither federal nor state courts are required to relitigate in postconviction proceedings those claims which have been previously resolved."⁶

6. To protect the integrity of the procedural rules, the Court will not consider the merits of the postconviction claims where procedural bars exist.⁷

⁶*Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

⁷*Hicks v. State*, Del. Supr., No. 417, 1991, Walsh, J. (May 5, 1992)(ORDER); *Saunders v. State*, Del. Supr., No. 185, 1994, Walsh, J. (Jan. 13, 1995) (ORDER); *State v. Gattis*, Del. Super., Cr. A. No. IN90-05-1017, Barron, J. (Dec. 28, 1995)(citing *Younger v. State*, 580 A.2d at 554).

Based upon the foregoing, Defendant's Motion for Postconviction Relief is

DENIED.

IT IS SO ORDERED.

The Honorable Mary M. Johnston

Original: Prothonotary - Criminal Division