

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

**STATE OF DELAWARE**

v.

**PARIS L. CARNEY**

Defendant

)  
) CRIMINAL ACTION NUMBERS  
)  
) IN-01-01-0018-R1  
)  
) ID NO. 0012013208  
)

*Submitted: September 15, 2004*

*Decided: September 24, 2004*

***MEMORANDUM OPINION***

*Upon Motion of Defendant for Post-Conviction Relief - **DENIED***

HERLIHY, Judge

Defendant Paris Carney has moved for post-conviction relief. On April 23, 2001, he pled guilty to robbery in the first degree and to possession of a firearm during the commission of a felony. He was sentenced on the same date to the minimum sentences required for these offenses, a total of five years, and a period of probation to follow.

He filed no appeal. On September 7, 2004, however, he moved for post-conviction relief. His claim is that he was not indicted by the requisite twelve Grand Jurors.

Before undertaking a review of Carney's claim, the Court must determine if there are any procedural bars to doing so.<sup>1</sup> There is such a bar. Superior Court Criminal Rule 61 requires that any motion for post-conviction relief be filed within three years after the conviction becomes final.<sup>2</sup> "Final" has been interpreted to mean, in the case of a guilty plea, thirty days after sentencing. Or to put it another way, final means when the time for direct appeal has expired.<sup>3</sup>

Carney's thirty days expired on May 23, 2001, the date by which he could have taken a direct appeal. He did not do so, however, meaning his claim is time barred.

There is relief from this time bar if Carney can show a "colorable claim that there was a miscarriage of justice because of constitutional violation that undermined the

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<sup>1</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>2</sup> Superior Court Criminal Rule 61(i)(1).

<sup>3</sup> *Jackson v. State*, 654 A.2d 829, 832-833 (Del. 1995); *Murphy v. State*, Del. Supr., No. 377, 1998, Berger, J. (October 26, 1998)(ORDER).

fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”<sup>4</sup> This relief, however, is narrow.<sup>5</sup>

Carney’s claim cannot meet this narrow standard. First, he repeatedly cites to the Federal Rules of Criminal Procedure, arguing, that there must be twelve affirmative votes to indict. But in New Castle County, under state law, only nine Grand Jurors are needed to indict.<sup>6</sup> Carney’s reliance on Federal Rules and federal case law is totally misplaced. Second, the Grand Jury’s actual vote is privileged, but it can only indict when nine Grand Jurors decide to do so.<sup>7</sup> There is no basis to believe that less than nine chose to indict. The Grand Jury is instructed to place “Ignored” on a draft indictment if there is insufficient basis or votes to indict. Third, and most importantly, Carney’s guilty plea waived any prior defect, if any.<sup>8</sup>

In sum, Carney’s claim is hardly a constitutional one and certainly does not meet the criteria for relief from the time bar. His claim lacks merit.

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<sup>4</sup> Superior Court Criminal Rule 61(i)(5).

<sup>5</sup> *Bailey v. State*, 588 A.2d 1121, 1130 (Del. 1991).

<sup>6</sup> 10 *Del. C.* §4505.

<sup>7</sup> Superior Court Criminal Rule 6(e)(2), (g).

<sup>8</sup> *Barham v. State*, Del. Supr., No. 395, 2002. Walsh, J. (Sept. 16, 2002)(ORDER).

*Conclusion*

For the reasons stated herein, Paris Carney's motion for post-conviction relief is  
**DENIED.**

**IT IS SO ORDERED.**

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J.