

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

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 0008020754
	)	
JAMAH K. GROSVENOR,	)	
	)	
Defendant.	)	

Submitted: March 10, 2006  
Decided: June 30, 2006

**On Defendant's *Pro Se* Motion for Postconviction Relief. DENIED.**

**ORDER**

R. David Favata, Deputy Attorney General, Wilmington, Delaware 19801.

Jamah K. Grosvenor, Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware 19977. *Pro se.*

**CARPENTER, J.**

On this 30<sup>th</sup> day of June, 2006, upon consideration of Defendant's Motion for Postconviction Relief it appears to the Court that:<sup>1</sup>

1. Jamah Grosvenor, ("Defendant"), has filed a *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). For the reasons set forth below, Defendant's Motion for Postconviction Relief is **DENIED**.

2. On December 18, 2000, Defendant pled guilty to Burglary Third Degree and Assault Third Degree and was sentenced to thirty months of Level 2 probation. The Defendant did not appeal his conviction or sentence. On August 8, 2002, following a violation of probation hearing, Defendant was incarcerated. Thereafter, Defendant filed a motion for sentence reduction, which on October 23, 2002, was denied by the Court.

3. Consequently, Defendant filed his first motion for postconviction relief asserting claims of an invalid indictment and ineffective assistance of counsel, which was denied by this Court on January 30, 2004.<sup>2</sup> On May 12, 2004, this Court's decision was affirmed by the Supreme Court of Delaware.<sup>3</sup>

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<sup>1</sup>The following facts were abstracted from this Court's opinion issued on January 30, 2004 denying the Defendant's first motion for postconviction relief.

<sup>2</sup>*State v. Grosvenor*, 2004 WL 249575 (Del. Super. Ct.), *aff'd*.

<sup>3</sup>*State v. Grosvenor*, 849 A.2d 33 (Del. 2004).

4. On December 2, 2005, Defendant filed a second motion for postconviction relief, again alleging ineffective assistance of counsel and a lack of jurisdiction by the Superior Court due to an invalid indictment. It is this motion currently before the Court.

5. Prior to delving into the merits of a postconviction relief claim, the Court must first determine that the motion meets the procedural requirements of Rule 61(I).<sup>4</sup> Under the law that was in effect when the Defendant was sentenced, a motion seeking postconviction relief was required to be filed within three years after the judgment of conviction is final.<sup>5</sup> Pursuant to Rule 61(m)(1), “A judgment of conviction is final for the purpose of this rule as follows: (1) If the defendant does not file a direct appeal, 30 days after the Superior Court imposes sentence.” In this case, Defendant pled guilty on December 18, 2000, and he was sentenced for those crimes that same day. While Mr. Grosvenor has since violated his probation causing his sentence to

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

<sup>5</sup>Super. Ct. Crim. R. 61(I)(1) states that “[a] motion for postconviction relief may not be filed more than three years after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than three years after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.” Super. Ct. Crim. R. 61(I)(1) was amended to bar postconviction motions filed more than one year from the final judgment, however, the amended rule is not applicable to the case at hand since it became effective on July 1, 2005 and is only applicable to subsequent final judgments.

be modified, the violation in no way changes the finality of his plea and sentencing on December 18, 2000. Thus, the last day Mr. Grosvenor was entitled to file a motion for postconviction relief would have been January 17, 2004. Accordingly, Mr. Grosvenor's motion is procedurally barred as untimely under Rule 61(I)(1).

6. However, even if the motion was not barred as untimely, Mr. Grosvenor's claim that his indictment did not include the necessary elements for Burglary Second Degree<sup>6</sup> is without merit and can be summarily dismissed pursuant to Rule 61(d)(4).<sup>7</sup> The Defendant asserts that because the indictment was faulty he "was never charged with an offense, thus, the court lacked jurisdiction to convict or punish, even though the conviction in question was reached by a plea agreement."<sup>8</sup> However, when a defendant enters a guilty plea, he waives "any defects in the prosecution, except for the Superior Court's lack of subject matter jurisdiction."<sup>9</sup> A challenge to the sufficiency of an indictment is not a challenge to the subject matter

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<sup>6</sup>Defendant was originally indicted on a charge of Burglary Second Degree, and he pled guilty to Burglary Third Degree.

<sup>7</sup>Super. Ct. Crim. R. 61(d)(4) states 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 and cause the movant to be notified."

<sup>8</sup>Def. Mot. at 4.

<sup>9</sup>*Flemming v. State*, 612 A.2d 158 (Del. 1992) (A defendant's claim that the indictment was insufficient, and therefore the Superior Court did not have jurisdiction to accept his guilty plea, was without merit since his entry of a guilty plea waived his right to make this claim because it did not amount to a challenge to subject matter jurisdiction.)

jurisdiction of the Court, and thus Mr. Grosvenor's motion with respect to this claim is without merit.

7. Lastly, while Mr. Grosvenor's claim of ineffective assistance of counsel is procedurally barred as untimely, if the motion was in fact deemed timely, this claim would be barred pursuant to Rule 61(I)(4)<sup>10</sup> since this allegation has been addressed by this Court in relation to the first postconviction motion filed by Mr. Grosvenor. The Court, in its opinion resolving Mr. Grosvenor's first postconviction motion, determined as follows with respect to the allegation that Counsel was not effective:

Defendant's fourth claim is that he asked his counsel to have the burglary charge dropped and Defendant asserts that Mr. Pankowski did not investigate the facts of the case and he did not attempt to have the burglary charge dismissed. However, the police witnessed the Defendant's actions on August 25, 2000 and the events set forth in the police report are consistent with a charge of burglary. It appears that since the Defendant has no recollection of his actions on August 25, 2000, the Defendant could not provide any information to Mr. Pankowski to counter the overwhelming evidence set forth in the police report. As such, Mr. Pankowski did not prejudice the Defendant by failing to challenge the burglary charge and the Court is not prepared to rule that Mr. Pankowski's performance falls below the *Strickland* standard.

Because this claim has previously been sufficiency addressed, and because the interest of justice does not warrant this Court to reconsider the same baseless

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<sup>10</sup>Rule 61(I)(4) states, "(4) Former adjudication. Any ground for relief that was formerly adjudicated . . . in a postconviction proceeding . . . is thereafter barred, unless reconsideration of a claim is warranted in the interest of justice."

assertions, the Defendant's motion with respect to the claim of ineffective assistance of counsel is also procedurally barred pursuant to Rule 61(I)(4).<sup>11</sup>

8. For the foregoing reasons, Mr. Grosvenor's Second Motion for Postconviction Relief is hereby summarily dismissed.

IT IS SO ORDERED.

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Judge William C. Carpenter, Jr.

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<sup>11</sup>*State v. Cannon*, 2000 WL 1610746 (Del. Super. Ct.) (The Court summarily dismissed a defendant's second postconviction motion, which asserted ineffective assistance of counsel, pursuant to Rule 61(I)(4), because the defendant's first motion was denied after raising the same issue, though slightly restated.)