

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

STATE OF DELAWARE,)	
)	
v.)	ID No. 9912011058
)	
JAMARR L. CAMPBELL,)	
)	
Defendant.)	

Submitted: June 27, 2006
Decided: August 23, 2006

ORDER

UPON DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF

DENIED

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

1. Defendant was found guilty by a Superior Court jury of Possession with Intent to Deliver Cocaine and Possession of Cocaine Within 300 Feet of a Park. The judgment was affirmed by the Supreme Court of Delaware by Order dated July 15, 2002. On August 10, 2001, Defendant was sentenced to fifteen years at Level V, mandatory, for Possession with Intent to Deliver Cocaine; for Possession of Cocaine Within 300 Feet of a Park, Defendant was sentenced to 3 years in Level V, sentence

suspended for 3 years at Level IV, work release, after serving 6 months, sentence suspended for two years and 6 months at Level III, after serving 1 year, sentence suspended for 1 year 6 months at Level II. Probation is consecutive.

2. 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 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

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

² See *Younger*, 580 A.2d at 555; *State v. Conlow*, Del. Super., Cr. A. No. IN78-09-0985R1, 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).

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

3. The Rule 61(i)(5) exception is known as either the "miscarriage of justice" exception or the "fundamental fairness" exception. Rule 61(i)(5) states:

The bars to relief in paragraphs (1), (2) and (3) of Rule 61(i) shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

4. Clearly, the procedural bars of Rule 61(i)(1), (2) and (3) apply to Defendant's postconviction relief motion. However, Defendant relies on *State v. Smiley*,⁶ arguing that the Court has discretion to grant a motion for postconviction relief under Rule 61(i)(5) when there is an irreconcilable difference in the State's case.

⁴Del. Super. Ct. Crim. R. 61(i)(3).

⁵Del. Super. Ct. Crim. R. 61(i)(4).

⁶2002 WL 1753170 at *1 (Del. Super.).

5. Defendant current *pro se* Motion for Postconviction Relief filed on June 27, 2006, is his fourth postconviction relief motion. Defendant asserts that he is entitled to postconviction relief under the Rule 61(i)(5) exception regarding a newly recognized right after a direct appeal. Defendant asserts that according to *Wintjen v. State*, the Court has discretion to grant a motion for postconviction relief under Rule 61(i)(5) when there is an irreconcilable difference in the State's case.⁷ Delaware Courts have held that an "irreconcilable conflict" exists where the State's case involves inconsistencies between the testimony of different State witnesses.⁸ Defendant claims that there were irreconcilable differences in the State's witnesses' testimony. Defendant asserts that Officer Mark Herron was the only witness who claimed he actually saw Defendant possess the cocaine. Herron, however, was not sure that it was cocaine that Defendant tossed. Defendant asserts that Herron's testimony was in complete contradiction to the testimony of Brian Witte, Doug Baylor, and Martin Lenhardt. The record does not support Defendant's contentions.

6. In his direct appeal, Defendant raised nine separate issues for the Supreme Court's consideration. One of the issues raised by Defendant was insufficient proof of the charges against him. The Supreme Court reviewed at length

⁷398 A.2d 780 (1979).

⁸*Ward v. State*, 1991 WL 181476, at *3 (Del.).

the testimony of State witnesses, Doug Baylor, Brian Witte, Marty Lenhardt, and Mark Herron.

7. As set forth in the Supreme Court Order dated July 15, 2002, Officer Mark Herron was on duty with his partner, Officer Douglas Baylor of the Wilmington Police Department on December 16, 1999. They were working with other members of the Operation Safe Streets team in a high-crime area located around 24th and Carter Streets in Wilmington, Delaware. Herron and Baylor were together in an unmarked police car as were Marty Lenhardt of Probation and Parole and Officer Brian Witte of the Wilmington Police Department.

8. Instead of conflicting, the testimony of the State witnesses is complimentary. The Supreme Court found:

When a defendant claims that the evidence against him was insufficient to support a jury verdict, the proper standard of appellate review requires this Court to determine “whether any rational trier of fact, viewing the evidence in the light most favorable to the [prosecution], could have found the essential elements of the charged offense beyond a reasonable doubt.”⁹ In this case, Campbell was charged with Possession with Intent to Distribute Cocaine¹⁰ and Possession of Cocaine Within 300 Feet of a Park.¹¹ Our review of the trial transcript in this case reveals that a reasonable juror clearly could have found the essential elements of these charged offenses beyond a reasonable doubt

⁹*Morrisey v. State*, 620 A.2d 207, 213 (Del. 1993).

¹⁰16 *Del. C.* §§ 4716(b)(4) and 4751 (1995).

¹¹16 *Del. C.* § 4768 (1995).

by relying on the testimony of the State's witnesses. To the extent Campbell complains there was insufficient proof that he "possessed" the drugs, the jury accepted Herron's testimony that he witnessed Campbell throw something into the street, which he subsequently retrieved and gave to Baylor, and which ultimately was revealed to be crack cocaine. The element of "possession" of cocaine was, thus, clearly established¹² and there was no plain error.

9. In *Smiley*, the irreconcilable conflict created by the testimony of the two State witnesses, Armorer and Harris, was clear:

Armorer testified that Defendant flees the scene on the arrival of the first police car. Harris testified that he was the first police car to arrive at the scene, sees Defendant who looks surprised and brings him over to the car. Armorer testified that another unit arrests Defendant while Harris finds the discarded plastic bag. Harris testified that he apprehended Defendant and then followed Armorer's directions to the plastic bag. Armorer testified that as Defendant fled, the other two unknown males simply walked away. Harris testified that when he first arrived he saw Defendant with at least one other suspect and possibly two. Armorer testified that he only relayed one description of a suspect over the police radio. Harris testified that he heard descriptions of at least two suspects and possibly three. There was no testimony from Armorer's alleged first unit who arrived, chased Defendant and arrested him.¹³

10. In contrast to *Smiley*, in the instant case, this Court, as well as the Supreme Court, found sufficient non-contradictory evidence to support the jury's determination.

¹²16 *Del. C.* § 4701(30) (1995).

¹³*Id.* at *2.

11. Because the Court has determined that Defendant's motion for postconviction relief is not within the "miscarriage of justice" exception of Rule 61(i)(5), the procedural bars of Rule 61(i)(1), (2), (3) and (4) apply. Defendant's motion must be denied because it is time barred, repetitive and a rehash of a matter that was formerly adjudicated in the Supreme Court on direct appeal. To protect the integrity of the procedural rules, the Court will not consider the merits of the postconviction claims where a procedural bar exists.¹⁴

THEREFORE, Defendant's Motion for Postconviction Relief is hereby **DENIED**.

IT IS SO ORDERED.

The Honorable Mary M. Johnston

ORIGINAL: PROTHONOTARY'S OFFICE - CRIMINAL DIV.

¹⁴*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; *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)).