SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

N440 STATE MAIL
Larry D. Floyd
James T. Vaughn Correctional Center
SBI #001, Unit W
1181 Paddock Road
Smyrna, Delaware 19977

RE: ***State of Delaware v. Larry D. Floyd***
I.D. No. 88S00074DI

Received: March 15, 2012
Decided: April 18, 2012

Dear Mr. Floyd:

I have received your fifth motion for postconviction relief in which you seek DNA testing for certain items of evidence that were introduced at your trial for Unlawful Sexual Intercourse First Degree, Burglary Second Degree and Criminal Mischief. Your motion is summarily dismissed.

You were found guilty as charged January 24, 1989 and sentenced March 13, 1989. The Supreme Court mandate affirming your convictions was filed November 27, 1989, meaning that your sentence became final December 27, 1989. You have unsuccessfully sought State postconviction relief and sentence reductions, as well as federal *habeas* relief. [1]

You now seek DNA testing on certain evidentiary items. Pursuant to 11 *Del.C.* § 4504(a), an individual whose conviction became final prior to September 1, 2000 could

[1]For further details see *Floyd v. State*, 1995 WL 622408 (Del.)(affirming this Court's denial of your fourth postconviction relief motion).

file a motion requesting DNA testing no later than September 1, 2004.[2] Your motion is time-barred by statute[3] and Supreme Court precedent in *Wolf v. State*, *supra*.

Furthermore, you could have brought this claim earlier and have shown no cause for not having done so. Nor have you shown actual prejudice, as discussed, *infra*. Your claim is therefore barred by Rule 61 (i)(3).[4]

Nonetheless, you allege that your case meets the six statutory requirements for post-trial DNA testing. Assuming without deciding that you could make this showing, I find no merit in your argument that DNA testing would vindicate you.

At trial the chief investigating officer testified that certain items had been seized from both the victim and yourself. These items were submitted to the FBI for blood and fiber testing to reveal any link between the victim and yourself. The FBI found no corroborating evidence. As testified to by the officer, these items were the victim's nightshirt, your pants and sweater, as well as samples, slides and cultures collected in the rape kit.

Because of the lack of corroboration, the State did not introduce the FBI reports in its case against you. Members of the jury heard about the FBI findings on cross examination and were well aware that the blood and fiber analysis did not link you to the charged crimes.

The record contains the FBI reports, which you included in your third postconviction motion. Testing was conducted on 20 items taken from the victim and 8 items taken from you. The testing detected no transfer of hair or fibers between the victim and yourself. Blood testing was inconclusive, and no semen was found on the samples.

Any DNA testing conducted now, assuming such testing were feasible, could produce no better result on your behalf. In *Wolf v. State, supra,* the defendant was convicted of rape in 1989 and sought DNA testing in 2004, alleging that the test results would prove actual innocence. The Supreme Court rejected his contention:

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[2]*Wolf v. State*, 2004 WL 1097701, at *1 (Del.).

[3]Title 11 *Del.C.* § 4504 provides "Any such motion [for DNA testing] may not be filed more than three years after the judgement [sic] of conviction is final."

[4]Rule 61 requirements apply to § 4504(a) motions. *See, e.g., State v. Crawford*, 2005 WL 2841652 (Del.Super.); *Wolf v. State, supra*; *State v. Brookins*, 2002 WL 31477997 (Del.Super.).

> [T]he testing Wolf seeks would not produce any more favorable result than that produced during the [1989] trial, since the testing done at that time indicated that the semen from the victim's underwear did not come from Wolf. Wolf was convicted of rape based upon his testimony and that of the victim. The jury found the victim's testimony to be more credible than that of Wolf. Thus, no evidence relevant to Wolf's assertion of actual innocence will result from additional testing.[5]

The reasoning in *Wolf* applies to your case because the facts are so similar. In your case, several witnesses testified for both parties at trial. The victim testified against you. You testified on your own behalf. The jury accepted the victim's testimony and rejected yours, despite the lack of corroborating physical evidence. As in the *Wolf* case, DNA testing would not be more helpful to you than the negative test results presented to the jury at trial. Stated otherwise, for purposes of Rule 61(i)(3), you did not suffer actual prejudice by not having had DNA testing.

Your motion does not meet postconviction procedural requirements and has no substantive merit. Rule 61(d)(4) provides that "[i]f it plainly appears from the motion for postconviction relief and the record of the 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."[6]

I find that the record plainly shows that you are not entitled to the relief you seek, and your postconviction motion is hereby **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary

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[5] *Id.* at *2.

[6] Rule 61 requirements apply to § 4504(a) motions. *See, e.g., State v. Crawford*, 2005 WL 2841652 (Del.Super.); *Wolf v. State, supra*; *State v. Brookins*, 2002 WL 31477997 (Del.Super.).

Paula T. Ryan, Esquire, Department of Justice