

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

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID No. 92009719DI
)	
GARY M. HAMILTON,)	
)	
Defendant.)	
)	

Submitted: February 26, 2013
Decided: March 19, 2013

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
AND/OR MOTION FOR THE CORRECTION OF SENTENCE
SHOULD BE SUMMARILY DISMISSED.**

Kathleen Jennings, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Gary M. Hamilton, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se*.

PARKER, Commissioner

This 19th day of March 2013, upon consideration of Defendant's Motion for Postconviction Relief and/or Motion for the Correction of Sentence, it appears to the Court that:

1. On October 21, 1974, a Superior Court jury convicted Defendant Gary Hamilton of the crimes of Murder in the First Degree, Kidnapping in the First Degree, and two counts of Possession of a Deadly Weapon During the Commission of a Felony. The crimes from which the charges stemmed occurred on January 18, 1974.

2. After disposition of motions, which were delayed awaiting transcripts, Defendant was sentenced in 1977. Defendant was sentenced as follows:

- * On the Murder First Degree charge- imprisonment for the remainder of Defendant's natural life, beginning January 19, 1974, with eligibility of parole;
- * On the Kidnapping First Degree charge- imprisonment for 10 years beginning January 19, 1974 and ending January 18, 1984; and
- * On each of the Possession of a Deadly Weapon During the Commission of a Felony charges- imprisonment for 5 years on each charge beginning January 19, 1974 and ending January 18, 1984.¹

3. Defendant's convictions and sentences were affirmed by the Delaware Supreme Court on December 20, 1977. The Delaware Supreme Court issued its mandate affirming Defendant's conviction and sentence on January 24, 1978.²

4. Following the Delaware Supreme Court's affirmance of Defendant's conviction and sentence on direct appeal, Defendant filed a number of unsuccessful motions for Rule

¹ See, Superior Court Docket No. 61; *State v. Hamilton*, 1990 WL 177577 (Del.Super. 1990).

² Superior Court Docket No. 66.

61 postconviction relief³ and an unsuccessful motion for correction of sentence.⁴ Defendant also filed a writ of habeas corpus in the United States District Court for the District of Delaware which was dismissed on May 19, 1982 for failure to exhaust all State remedies.

5. On February 19, 2013, over 35 years after the Delaware Supreme Court issued its mandate affirming Defendant's conviction and sentence, Defendant filed the subject motion for postconviction relief and/or motion for correction of sentence. In the subject motion, Defendant essentially seeks to have his life sentence defined as a fixed time of 45 years.

6. Defendant is bringing this motion pursuant to Delaware Superior Court Rule 61 (which governs the procedure for collaterally attacking a criminal conviction) and/or Rule 35 (which governs the procedure for seeking to correct an illegal sentence). In the subject motion, Defendant is not attacking his conviction. He is, however, challenging the legality of his sentence. Because Defendant is not attacking his conviction, Rule 61 is inapplicable, and this motion should properly be considered under Rule 35.

7. At the onset it is noted that Defendant's sentences on his convictions other than murder first degree have been completed since Defendant has been imprisoned for a greater time that was imposed on those charges and all of the sentences including the murder first degree charge were made to run concurrently.⁵

³ First Motion for Postconviction Relief filed November 29, 1978, Superior Court Docket No. 69; First Motion denied January 29, 1979, Superior Court Docket No. 70; Second Motion for Postconviction Relief filed June 28, 1982, Superior Court Docket No. 85; Third Motion for Postconviction Relief filed August 30, 1982, Superior Court Docket No. 86; Motions for Postconviction Relief denied on April 27, 1983, Superior Court Docket No. 98; Fourth Motion for Postconviction Relief filed October 5, 1992, Superior Court Docket No. 107; Fourth Motion for Postconviction Relief denied December 18, 1992, Superior Court Docket No. 108.

⁴ *State v. Hamilton*, 1990 WL 177577 (Del.Super. 1990), *aff'd*, 1990 WL 197855 (Del.).

⁵ See, *State v. Hamilton*, 1990 WL 177577, at *2 (Del.Super. 1990), *aff'd*, 1990 WL 197855 (Del.).

8. In the subject motion, Defendant contends that his sentence on the murder first degree conviction to imprisonment for the remainder of his natural life beginning January 19, 1974 with eligibility of parole should be defined as a fixed term of 45 years and that his constitutional due process and equal protection rights are violated if he is not afforded this determination.

9. Defendant was convicted on October 21, 1974, for crimes which occurred on January 18, 1974. Following Defendant's conviction of Murder in the First Degree, a hearing was held on October 23, 1974 to determine Defendant's sentence, pursuant to the then existing 11 *Del. C.* § 4209(2), where the jury made the determination as to whether Defendant was to be sentenced to life imprisonment without parole or to life imprisonment with eligibility for parole. Defendant was sentenced to life imprisonment with the possibility of parole.

10. Defendant's life sentence was never defined as a fixed term of 45 years, neither at the time he was sentenced or now. Defendant was sentenced to imprisonment for the rest of his natural life unless he is paroled.

11. For the purposes of eligibility for parole, however, a person sentenced to life imprisonment is considered as having been sentenced to a fixed term of 45 years.⁶ The designation of a life sentence as a fixed term of 45 years was necessary prior to the Truth in Sentencing Act to allow for calculation of parole eligibility.⁷ Section 4346, the Parole

⁶ 11 *Del.C.* § 4346(c).

⁷ The decision to release an inmate on parole is, however, within the discretion of the Parole Board. *Evans v. State*, 872 A.2d 539, 554 (Del. 2005). Indeed, a prisoner has no legally enforceable right to be paroled and a prisoner who is denied parole has no claim of a due process violation. *Beebe v. Carroll*, 2004 WL 1195449, at *1 (Del.).

Eligibility statute, never did and still does not affect the actual duration of a life sentence.⁸

12. Therefore, Defendant's life sentence at the time he was sentenced was for the remainder of his natural life, unless he is granted parole. For purposes of parole eligibility only, Defendant's life sentence is computed as a term of 45 years. Defendant's life sentence as imposed was lawful and his claim must fail under Rule 35.

13. After Defendant was sentenced, the Truth in Sentencing Act of 1989 ("TIS") was enacted which revamped the sentencing laws.⁹ It is important to emphasize that the TIS explicitly excluded Murder First Degree from any of the benefits of the Act.¹⁰

14. Indeed, after the TIS was enacted, a defendant convicted of First Degree Murder could only be sentenced to death or life imprisonment without the benefit of probation or parole or any other reduction.¹¹ Consequently, under the TIS, Defendant could not receive a more lenient sentence for First Degree Murder than he received at the time of his sentencing in 1977.¹²

⁸ *Evans*, 872 A.2d at 558 (For purposes of parole eligibility only, defendant's life sentence was computed as a term of 45 years.).

⁹ 67 Del. Laws, Ch. 130 (1989).

¹⁰ See, 11 *Del. C.* § 4204(b)(A person convicted of a class A felony may be sentenced to life imprisonment in accordance with § 4205 of this title, **unless the conviction is for first degree murder**, in which event §4209 of this title shall apply. **Notwithstanding any other statute, a sentence under § 4209 of this title may not be suspended or reduced by the court.**)

Consistent with that provision, 11 *Del.C.* § 4205(b)(1) provides that for class A felony convictions, a defendant may be sentenced from 15 years to life imprisonment **except for conviction of first degree murder in which event § 4209 shall apply.**

11 *Del. C. Sec.* 4209(a) provides that for any person convicted of first degree murder the person shall be punished by death or by imprisonment for the remainder of the person's natural life without the benefit of probation or parole or any other reduction.

¹¹ 11 *Del. C.* § 4209(a).

¹² *State v. Hamilton*, 1990 WL 177577, at *3 (Del.Super.).

15. The TIS prospectively abolished parole¹³ but the TIS allowed for the conditional release of eligible inmates.¹⁴ The TIS completely eliminated parole for crimes committed after its effective date but continued to permit the conditional release for good time credit for eligible inmates. Defendant, however, was never an eligible inmate for conditional release under the TIS. As previously stated, defendants convicted of Murder in the First Degree was expressly excluded from any of the benefits of the TIS, including the conditional release provisions of the Act.

16. In the late 1990's and early 2000's, there were cases that discussed the interplay between the parole provisions of Section 4346 applicable prior to the enactment of the TIS and the conditional release provision, Section 4348, after the enactment of the TIS. Ultimately, the various decisions lead to the conclusion that a life sentence for anyone sentenced before TIS means the sentence is for the balance of the person's life; the sentence must be served unless the defendant is paroled, and that the "life" term does not mean 45 years.¹⁵

17. Defendant, in the subject motion, contends that he is entitled to have his life sentence defined as a fixed term of 45 years based on the holdings of some of those cases and that his constitutional due process and equal protection rights were violated when those holdings were later reversed and/or modified.

18. It is again emphasized that Defendant, convicted of First Degree Murder, was never entitled to any more lenient sentence under the TIS than he received in 1977, when he was sentenced. When he was sentenced in 1977 to life imprisonment, Defendant's life sentence was considered to be a natural life sentence. Defendant's life sentence was never

¹³ 11 *Del.C.* § 4354.

¹⁴ 11 *Del.C.* § 4348.

¹⁵ *Evans v. State*, 872 A.2d 539 (Del. 2005); *State v. Duffy*, 2012 WL 1415636, at *6 (Del.Super.).

considered to be a term of 45 years. At the time of Defendant's sentence in 1977, and at the present time, Defendant was and is required to spend the rest of his life in prison unless he is paroled.

19. After the enactment of TIS, various sentenced defendants (not convicted of First Degree Murder) raised issues as to whether their "life" sentence actually meant life or whether it meant 45 years.

20. In *Jackson v. Multi-Purpose Criminal Justice Facility*, 700 A.2d 1203 (Del. 1997), the defendant convicted of first degree kidnapping and first degree rape was sentenced to life imprisonment with the possibility of parole before the enactment of the TIS. In *Jackson*, the Delaware Supreme Court held that Section 4348 (allowing for the conditional release of eligible inmates) did not incorporate Section 4346(c)'s definition of a life sentence as a fixed term of 45 years and thus, those serving life sentences were precluded from qualifying for early release.¹⁶

21. Then came the decision in *Crosby v. State*, 824 A.2d 894 (Del. 2003). The *Crosby* defendant was given a life sentence under TIS. Defendant was sentenced for Forgery Second Degree and given a life sentence as a habitual offender under 11 *Del. C.* 4214(a). The Delaware Supreme Court held that Section 4348 (allowing for the conditional release of eligible inmates) incorporated section 4346(c)'s definition of a life sentence as a fixed term of 45 years. The Delaware Supreme Court overruled *Jackson* to the extent it was inconsistent with this opinion.¹⁷

22. In *Evans v. State*, 2004 WL 2743546 (Del.) ("*Evans I*"), the Delaware Supreme Court, following its holding in *Crosby*, held that a defendant sentenced to life with the

¹⁶ *Jackson v. Multi-Purpose Criminal Justice Facility*, 700 A.2d 1203 (Del. 1997).

¹⁷ *Crosby v. State*, 824 A.2d 894, 899 (Del. 2003).

possibility of parole prior to the enactment of TIS, meant that the defendant was serving a 45 year sentence subject to conditional release. However, in *Evans v. State*, 872 A.2d 539 (Del. 2005) (“*Evans II*”), the Delaware Supreme Court withdrew its first decision and ultimately concluded that it had rendered over broad statements in *Crosby*; *Crosby* did not apply to violent crimes; and that for defendants convicted of violent crimes *Jackson* controlled.

23. In *Evans II*, the Delaware Supreme Court held that a life sentence for anyone sentenced before TIS means the sentence is for the balance of that person’s life; the sentence must be served unless the defendant is paroled; the “life” term does not mean 45 years; and the defendant is not entitled to conditional release.¹⁸

24. Defendant’s contention that his constitutional due process and equal protection rights were violated by the *Evans II* decision is without merit. First, Defendant, convicted of First Degree Murder, was never entitled to any of the benefits of the TIS. Defendant was never eligible for conditional release under the TIS and his life sentence was always defined as his natural life. Second, even for those inmates that were not convicted of Murder in the First Degree and, therefore, not ineligible for the benefits of the TIS, their constitutional rights were not violated by the *Evans II* decision.

25. The Delaware Supreme Court and the federal court have consistently rejected claims that the *Evans II* decision had the effect of retroactively increasing a prisoner’s

¹⁸ *Evans v. State*, 872 A.2d 539 (Del. 2005); *State v. Duffy*, 2012 WL 1415636, at *6 (Del.Super.).

sentence. The courts have also consistently rejected claims that a defendant's constitutional due process and equal protection rights were violated by this decision.¹⁹

26. Defendant's release date is death, unless he is granted parole. For purposes of parole eligibility only, Defendant's life sentence is computed as a term of 45 years. Defendant's life sentence as imposed, imprisonment for the remainder of Defendant's natural life, with eligibility of parole, was and is lawful and Defendant's motion for postconviction relief and/or for the correction of sentence should properly be denied.

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief and/or Motion for Correction of Sentence should be denied.

IT IS SO RECOMMENDED.

Commissioner Lynne M. Parker

oc: Prothonotary

¹⁹ *Evans v. State*, 918 A.2d 1170, 2005 WL 5118396, at *2 (Del. 2007)(there are no due process constitutional violations arising from the statutory interpretations where there was more than one plausible reading and it was foreseeable that the court could choose one of those readings); *Evans v. Phelps*, 2012 WL 1223971, at *4-5 (3rd Cir. 2012)(defendant had fair notice that violent defendants sentenced to life in prison are ineligible for Section 4348 relief and there is no violation of federal due process rights resulting from the Delaware Supreme Courts decision in *Evans*); *Shockley v. Carroll*, 489 F.Supp.2d 397, 404 (Del. 2007)(petitioner's due process claim and equal protection claim resulting from *Evans* decision is meritless); *State v. Duffly*, 2012 WL 1415636, at *6 (Del.Super.)(citing cases).