

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

STATE OF DELAWARE,)	
)	
v.)	Cr. ID No. 9603002509
)	
GERALD A. WILMER,)	
)	
Defendant.)	
)	

Submitted: October 16, 2013
Decided: January 31, 2014

**MEMORANDUM OPINION AND ORDER WITH RESPECT TO (A) MOTION FOR
POSTCONVICTION RELIEF; (B) MOTION FOR APPOINTMENT OF COUNSEL AND
(C) MOTION FOR EVIDENTIARY HEARING**

Gerald A. Wilmer, SBI #00218977, James T. Vaughn Correctional Center, Smyrna, Delaware.
Kathleen M. Jennings, Esquire, Delaware Department of Justice, Wilmington, Delaware.

DAVIS, J.

1. Mr. Wilmer was convicted of Unlawful Sexual Intercourse First Degree after a trial by jury on July 24, 1997. On September 12, 1997, Mr. Wilmer was sentenced to 30 years at Level V, suspended after 25 years. The Supreme Court of Delaware affirmed Mr. Wilmer's conviction on March 6, 1998. Mr. Wilmer has since filed seven claims for postconviction relief under Superior Court Criminal Rule 61, all of which were denied by this Court.

2. Mr. Wilmer filed his eighth Motion for Postconviction Relief on October 16, 2013 (the “Eighth Motion”).¹ In the Eighth Motion -- and in the accompanying memorandum of law filed in support of the Eighth Motion, Mr. Wilmer contends he is entitled to postconviction relief for the following reasons: (1) ineffective assistance of counsel (3 grounds involving post-conviction counsel); and (2) that *Martinez v. Ryan*, 132 S. Ct. 1309 (2012) somehow resurrects his initial claim of ineffective assistance of counsel made in his March 6, 2001 motion for postconviction relief.

3. In addition to the Eighth Motion and supporting memorandum of law, Mr. Wilmer filed a Motion for Appointment of Counsel and a Motion for Evidentiary Hearing. The Motion for Appointment of Counsel and the Motion for an Evidentiary Hearing seek relief in connection with the Eighth Motion.

4. Superior Court Criminal Rule 61 governs motions for postconviction remedy. Before addressing the substantive merits of any claim for postconviction relief, the Court must determine whether the defendant has satisfied the procedural requirements of Superior Court Criminal Rule 61 (“Rule 61”).² Rule 61(i) pertains to bars to relief. Under Rule 61(i)(1), “[a] motion for postconviction relief may not be filed more than one year after the judgment of conviction is final.”³ Under Rule 61(i)(2) any ground not asserted in a prior postconviction proceeding is barred “unless consideration of the claim is warranted in the interest of justice.”⁴ A defect under Rule 61(i)(1) or (2) will not bar a movant’s “claim that the court lacked jurisdiction or . . . a colorable claim that there was a miscarriage of justice because of a

¹ Mr. Wilmer submitted prior applications for postconviction relief on March 6, 2001, May 14, 2002, April 19, 2006, September 6, 2007, November 12, 2008, April 19, 2010 and April 25, 2013.

² *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). See also *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *State v. Mayfield*, 2003 WL 21267422, at *2 (Del. Super. Ct. June 2, 2003).

³ Del. Super. Crim. R. 61(i)(1).

⁴ *Id.* R. 61(i)(2).

constitutional violation that undermined the fundamental legality, reliability, integrity, or fairness of the proceedings leading to the judgment of conviction.”⁵ Finally, Under Rule 61(i)(4), any ground for relief that was formerly adjudicated in the proceedings leading to conviction, postconviction proceedings, or a habeas corpus proceeding “is thereafter barred unless reconsideration of the claim is warranted in the interests of justice.”⁶ “[T]he interest of justice has been narrowly defined to require that the movant show that the trial court lacked authority to convict or punish him.”⁷

5. Mr. Wilmer’s Motion is procedurally barred as untimely under Rule 61(i)(1), as it was filed more than one year – more than 16 years – after his conviction became final. Mr. Wilmer asserts no newly recognized rights that could overcome the time limitation of Rule 61(i)(1).

6. Mr. Wilmer’s Motion is also procedurally barred by Rule 61(i)(2) as a repetitive motion, because Mr. Wilmer has based prior motions for postconviction relief upon the same grounds as he bases the present Motion. A review of the record shows that Mr. Wilmer has asserted ineffective assistance of counsel claims in at least six of his prior motions for postconviction relief. Mr. Wilmer should have asserted any grounds for relief upon those bases in his prior motions for postconviction relief.

7. In addition, Mr. Wilmer’s claims are barred by Rule 61(i)(4) which prohibits relitigation of issues previously decided in proceedings for postconviction relief. Mr. Wilmer does not contend that this Court lacked the authority to convict or punish him, and this Court nonetheless finds no cause in the interest of justice to consider Mr. Wilmer’s claims despite that they are procedurally barred.

⁵ *Id.* R. 61(i)(5).

⁶ *Id.* R. 61(i)(4).

⁷ *State v. Wright*, 653 A.2d 288, 298 (Del. Super. 1994).

8. Mr. Wilmer also seeks to invoke the *Martinez* decision which, he claims, acts to resurrect his initial claim as to ineffective assistance of counsel. To the extent *Martinez* established a “new right, Mr. Wilmer had one year from the date of the *Martinez* decision to raise any claims under that decision.⁸ Since *Martinez v. Ryan* was issued on March 20, 2012, the Eighth Motion, filed on October 16, 2013, is untimely. As such, Mr. Wilmer’s argument, as it relates to *Martinez*, is time-barred.

9. For the reasons set forth above, Mr. Wilmer’s Motion for Postconviction Relief is **SUMMARILY DISMISSED**, as it plainly appears from the Eighth Motion and the record that Mr. Wilmer is not entitled to relief.

10. As the Eighth Motion has been summarily dismissed, the Court **DENIES** Mr. Wilmer’s (i) Motion for Appointment of Counsel and (ii) Motion for Evidentiary Hearing as being moot.

IT IS SO ORDERED.

/s/ Eric M. Davis

Eric M. Davis
Judge

⁸ *State v. Travis*, 2009 WL 5928077, *rev’d on other grounds*, 2 A.3d 75, 2010 WL 2854133 (Del. 2010)(TABLE).