

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

STATE OF DELAWARE,)	
)	
v.)	I.D. No. 980301202B
)	
DAVID M. WILLIAMS,)	
)	
Defendant.)	
)	

Submitted: October 9, 2013
Decided: December 11, 2013

MEMORANDUM OPINION AND ORDER

DAVIS, J.

1. A jury found David M. Williams guilty of Attempted Burglary Second Degree, Possession of Burglary Tools and Criminal Mischief Less Than \$1000 on August 24, 1999. The Court declared, under 11 Del. C. § 4214(a), Mr. Williams a habitual offender and sentenced Mr. Williams on October 8, 1999. The Supreme Court of Delaware affirmed Mr. Williams' conviction on May 30, 2000.

2. Since being sentenced on October 8, 1999, Mr. Williams has filed numerous motions for postconviction relief under Superior Court Criminal Rule 61. Most recently, on July 29, 2013, Mr. Williams filed his ninth Superior Court Criminal Rule 61 motion (the "Ninth Motion").¹ The State filed a response to the Ninth Motion on October 9, 2013.

3. In the Ninth Motion, Mr. Williams contends he is entitled to postconviction relief for the following reasons: (1) a pending Criminal Rule 48 motion to dismiss; (2) the purported failure of Catherine Damavandi, Esquire, to comply with an Order issued by Superior Court

¹ Mr. Williams submitted prior applications for postconviction relief on June 20, 2000, November 6, 2000, January 28, 2002, June 17, 2005, February 2, 2006, September 2, 2008, December 17, 2009 and July 11, 2012.

Commissioner Reynolds; and (3) a purported improper sentencing under Section 4214(a) due to changes in Mr. Williams' status sheet.

4. In essence, the Ninth Motion's factual and legal arguments revolve around typographical errors in the criminal action numbers on Mr. Williams' Offender Status Sheet. Due to this, Mr. Williams contends that he could not previously raise the bases for relief asserted in the Ninth Motion because his "status sheet was changed, and charge different from section 4214A, Designation, and charges dismissed as stated in appeal no. 470, 2010 Del. Supreme Court appeal."²

5. On October 9, 2013, this Court denied Mr. Williams' Criminal Rule 48 motion. In denying the Criminal Rule 48 motion, the Court found that the motion lacked any factual or legal merit. The Court further held that the "complained of" issues in the Criminal Rule 48 motion related to a scrivener error which error had been corrected. In the first instance, the ruling by this Court on the Criminal Rule 48 motion appears to moot substantially all of the arguments made in the Ninth Motion.

6. 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").³ 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."⁴ Under Rule 61(i)(2) any ground not asserted in a prior postconviction

² Ninth Motion at 3.

³ *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).

⁴ Del. Super. Crim. R. 61(i)(1).

proceeding is barred “unless consideration of the claim is warranted in the interest of justice.”⁵

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 constitutional violation that undermined the fundamental legality, reliability, integrity, or fairness of the proceedings leading to the judgment of conviction.”⁶

7. Mr. Williams’ Ninth Motion is procedurally barred as untimely under Rule 61(i)(1), as it was filed more than one year – here over 13 years – after his conviction became final. Mr. Williams asserts no newly recognized rights that could overcome the time limitation of Rule 61(i)(1).

8. The Ninth Motion is also procedurally barred by Rule 61(i)(2) as a repetitive motion. Mr. Williams has filed numerous Criminal Rule 61 motions and never raised the grounds for relief asserted in the Ninth Motion as required under Rule 61(b)(2). Moreover, Mr. Williams asserted grounds for relief almost entirely relate to a scrivener error which has been corrected. A scrivener error surely cannot constitute the warranted “interest of justice” that would serve as a basis for postconviction relief under Criminal Rule 61.

9. The Ninth Motion is **SUMMARILY DISMISSED**, as it plainly appears from the Motion and the record that Mr. Williams is not entitled relief.

IT IS SO ORDERED.

/s/ Eric M. Davis

Eric M. Davis
Judge

⁵ *Id.* R. 61(i)(2).

⁶ *Id.* R. 61(i)(5).