

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

STATE OF DELAWARE,)	
)	
v.)	Cr. ID No. 9911016961
)	
DARREL PAGE,)	
)	
Defendant.)	
)	

Submitted: April 30, 2013
Decided: August 13, 2013

MEMORANDUM OPINION AND ORDER

Darrel Page, SBI 00, James T. Vaughn Correctional Center, Smyrna, Delaware.

Kathleen M. Jennings, Esquire, Delaware Department of Justice, Wilmington, Delaware.

DAVIS, J.

TRIAL, CONVICTION AND SENTENCING

1. On June 17, 2003, after a trial by jury, Mr. Page was convicted of three counts of Murder in the First Degree, one count of Robbery Second Degree, one count of Conspiracy First Degree, one count of Endangering the Welfare of a Child, and various weapons charges. After the penalty phase on the Murder in the First Degree charges, the jury recommended a death sentence for Mr. Page. On February 24, 2006, the Court sentenced Mr. Page to life imprisonment without the possibility of parole for each count of Murder in the First Degree.

2. Mr. Page appealed his convictions and sentence to the Delaware Supreme Court. He was represented by counsel separate from his trial counsel in that proceeding. In the appeal, Mr. Page contended that (1) the State violated his Sixth Amendment right to a speedy trial; (2) he

received ineffective assistance of counsel at trial; and (3) the trial judge erred in admitting certain evidence -- photographs, crime scene video, and a video of an out-of-court statement to police by Kim Still, a State witness.

3. In an Opinion dated October 19, 2007, the Supreme Court affirmed Mr. Page's convictions and sentences. The Court held that Mr. Page was not denied his right to a speedy trial, and that this Court did not err or abuse its discretion in admitting the photographs and videos. The Supreme Court, however, did not address Mr. Page's ineffective assistance of counsel claims because that argument had not yet been considered by this Court.

FIRST RULE 61 MOTION FOR POSTCONVICTION RELIEF

4. Mr. Page, through counsel, filed his first motion for postconviction relief on October 10, 2008. In addition, Mr. Page, acting *pro se*, also filed a "first" motion for postconviction relief on October 30, 2008. Mr. Page also attempted to amend his *pro se* motion for postconviction relief on March 17, 2009. The Court rejected the amendment and went forward on the earlier filed motions. In the motions, Mr. Page claimed he had been denied his constitutional right to effective assistance of counsel. This Court directed Mr. Page's two trial attorneys to submit affidavits in response to the motion. One attorney denied Mr. Page's allegations, and the other did not respond. On April 28, 2009, the Court denied in part and summarily dismissed in part Mr. Page's motion. Mr. Page, again represented by counsel, moved for reconsideration of the motion, and the Court denied his request.

5. Mr. Page appealed this Court's denial of his postconviction motion for relief on the basis that he did not receive copies of his attorneys' affidavits or an opportunity to respond to them. On August 7, 2009, the Supreme Court remanded Mr. Page's motion to this Court. The

Supreme Court remanded the motion so that Mr. Page would have an opportunity to respond to the affidavits filed by his trial attorneys.

6. On remand, on October 5, 2009, this Court denied in part and summarily dismissed in part Mr. Page's motion.

7. Mr. Page appealed the decision to the Supreme Court. After briefing and argument, the Supreme Court concluded that the record in this case was "inadequate and incomplete for the purposes of appellate review." The Supreme Court once again remanded the motion to this Court in an order dated January 19, 2010. The Supreme Court instructed this Court to specifically consider "the State's Constitutional obligations: (a) to provide counsel who are prepared to go to trial in a timely manner, and (b) to provide timely and adequate funding to defray the cost of necessary defense expert witnesses"¹ for Mr. Page's claim of ineffective assistance of counsel.

8. On February 9, 2010, Mr. Page, through counsel, submitted an amended motion for postconviction relief. Following the submission of affidavits and memoranda of law, and an evidentiary hearing, the Court denied Mr. Page's motion on March 17, 2010. Mr. Page appealed this Court's decision. The Supreme Court affirmed this Court's decision on June 2, 2010.

SECOND RULE 61 MOTION FOR POSTCONVICTION RELIEF

9. On March 11, 2011, Mr. Page filed a second motion for postconviction relief. Mr. Page acted *pro se* with respect to this second motion for postconviction relief. Mr. Page argued that Ms. Still's testimony was false, irrelevant, and constituted inadmissible character evidence. Additionally, Mr. Page argued that the trial testimony of Muhammad Reinford, one of the State's witnesses, was false. Mr. Page claimed the testimony was false because it contradicted Mr. Reinford's testimony at co-defendant, Michael Jones' trial. Mr. Page

¹ *Page v. State*, 301 at 2-3 (Del. Jan. 19, 2010).

contended that this led to a conviction through a fundamentally unfair deprivation of due process. Mr. Page claimed the inconsistencies in testimony were newly discovered evidence, and that the counsel who represented him for his first motion for postconviction relief was not effective because he failed to raise the same newly discovered evidence claims. The Court denied Mr. Page's motion on March 30, 2011. Mr. Page appealed this Court's decision to the Supreme Court. The Supreme Court affirmed this Court's decision on January 3, 2012.

THIRD AND PENDING RULE 61 MOTION FOR POSTCONVICTION RELIEF

Mr. Page's Claims for Relief

10. Before the Court is Mr. Page's third motion for postconviction relief, which he filed on March 19, 2013. Mr. Page amended this third motion on April 30, 2013 (as amended, the "Third Motion"). In the Third Motion, Mr. Page claims his direct appeal counsel was ineffective based on his claims that (1) counsel failed to address trial counsel's failure to object to the relevance of certain testimonial evidence at trial, and (2) counsel will not provide Mr. Page copies of his trial transcripts. Mr. Page also takes issue with the admissibility of testimony from Kim Still. Mr. Page argues that Ms. Still's testimony about dealing arrangements between Mr. Page and Cedric Reinford, as well as money Mr. Page generated from drug sales, was unsubstantiated, false, speculative, irrelevant and served only as unfairly prejudicial character evidence.

11. Mr. Page additionally contends that he is entitled a new trial on the basis that Muhammad Reinford committed perjury while testifying at Mr. Page's trial. Citing the factors set out in *Larrison v. U.S.*,² which pertains to motions for new trial based on witness recantation,

² 23F.3d 82 (7th Cir. 1928) *overruled by United States v. Mitrione*, 357 F.3d 712 (7th Cir. 2004). The factors for consideration of whether a new trial should be granted are:

- (a) The court is reasonably well satisfied that the testimony given by a material witness is false;
- (b) That without it the jury might have reached a different conclusion; and

Mr. Page argues that a new trial is warranted because the jury may have reached a different result had Mr. Reinford's "false" testimony about the presence of drugs in the residence of one of the victims, Maneeka Plant, "been corrected"³ at trial. Mr. Page submits that he was surprised by the falsity of Mr. Reinford's testimony regarding the presence of drugs in the basement of Maneeka Plant's home. Mr. Page contends that the "introduction of false testimony that [had] a significant chance of affecting the jury verdict" jeopardized his due process rights in a manner that calls for reversal of his convictions and grant of a new trial.⁴

12. Mr. Page also requests relief in connection with his access to transcripts of his trial, arguing that his direct appeal counsel's withholding of transcripts since August 2010 is unreasonable conduct and a source of unfair prejudice to Mr. Page, in violation of his constitutional rights.

13. Mr. Page petitions the Court to order counsel to address his claims and to grant an oral argument and evidentiary hearing pursuant to Superior Court Criminal Rule 61(h)(1), with counsel appointed under Superior Court Criminal Rule 61(e)(1).

Legal Standard under Superior Court Criminal Rule 61

14. 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").⁵ Rule 61(i) pertains to bars of relief. Under Rule 61(i)(1), "[a] motion for postconviction relief may not be filed more than one year after the judgment of

(c) That the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial.

Id. at 87-88.

³ Pet'rs Mot. 22, 23.

⁴ *Id.* 25.

⁵ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990); *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *State v. Mayfield*, 2003 WL 21267422, at *2 (Del. Super. Ct. June 2, 2003).

conviction is final.”⁶ 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.”⁷ Under Rule 61(i)(3), “[a]ny ground for relief not asserted in the proceedings leading to judgment of conviction . . . is thereafter barred, unless the movant shows (A) cause for relief from the procedural default and (B) Prejudice from violation of the movant’s rights.”⁸ A defect under Rule 61(i)(1), (2), or (3), 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.”⁹ 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.”¹⁰ “[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.”¹¹

Legal Analysis and Application to Claims in Third Motion

15. Mr. Page’s claims are barred by Rule 61(i)(1) as untimely. Mr. Page’s claims are additionally barred by Rule 61(i)(2) as repetitive. Mr. Page raised his claims arising out of the trial testimony of Ms. Still and Mr. Reinford in his second motion for postconviction relief. Moreover, any claim Mr. Page has failed to raise by this point is barred, and remains barred, by Rule 61(i)(3). Mr. Page had more than ample opportunity to raise claimed deprivations of his constitutional rights during the proceedings leading to his convictions, direct appellate

⁶ Del. Super. Crim. R. 61(i)(1).

⁷ Del. Super. Crim. R. 61(i)(2).

⁸ Del. Super. Crim. R. 61(i)(3).

⁹ Del. Super. Crim. R. (i)(5).

¹⁰ Del. Super. Crim. R. 61(i)(4).

¹¹ *State v. Wright*, 653 A.2d 288, 298 (Del. Super. 1994).

proceedings, the lengthy proceedings of his first motion for postconviction relief, and his second motion for postconviction relief. In consideration of his first motion for postconviction relief, this Court and the Supreme Court took measures to thoroughly, fairly, and carefully review Mr. Page's claims. In prior proceedings, this Court has opined, and the Supreme Court has affirmed, that Mr. Page has suffered no deprivation of constitutional rights, by counsel, the Court, the State, or otherwise.

16. In consideration of the Third Motion, the Court again finds that Mr. Page has failed to demonstrate a violation of his constitutional rights which would warrant substantive consideration of his claims.

17. While Mr. Page claims ineffective assistance of appellate and post-trial counsel, Mr. Page asserts no credible facts to support his bare claims that counsel was ineffective. Instead, in that portion of the Third Motion which should address the ineffective assistance of counsel argument, Mr. Page attacks the Court's admission of Ms. Still's testimony into evidence. Mr. Page contends the admission constituted error because the testimony was false, speculative, and unfairly prejudicial to Mr. Page.

18. This Court and the Supreme Court have previously addressed Mr. Page's grievances regarding Ms. Still's testimony in prior proceedings. This Court and the Supreme Court have held that these grievances lack merit. There is nothing new in the Third Motion. Mr. Page still has not demonstrated a miscarriage of justice, in the form of a substantiated claim of ineffective assistance of counsel or otherwise, which would cause this Court to consider his claims under Rule 61(i)(5).

19. With respect to Mr. Reinford's testimony, Mr. Page's claims regarding Mr. Reinford's testimony are not only procedurally barred but these claims fail because *Larrison* is inapplicable. Here, Mr. Reinford has not recanted his testimony against Mr. Page.¹²

20. The claims also fail under the standard for a new trial based on the existence of newly discovered evidence. For a defendant to succeed in obtaining a new trial based on newly discovered evidence, the defendant must establish:

(1) that the evidence is such as will probably change the result if a new trial is granted; (2) that it has been discovered since the trial and could not have been discovered before by the exercise of due diligence; and (3) that it is not merely cumulative or impeaching.¹³

In this case, Mr. Reinford's testimony regarding the presence or lack of presence of drugs in Maneeka Plant's house would not change the result of Mr. Page's convictions at a new trial. That evidence, while potentially relevant, is simply not material enough to the charges of Murder in the First Degree to change the result at trial. Furthermore, the evidence is not the type which should have been discovered by the time of trial; instead, any inconsistencies or inaccuracies in Mr. Reinford's testimony would, at best, be impeaching evidence used to challenge Mr. Reinford's credibility.

21. The Court declines to find that this attempt to characterize Mr. Reinford as a perjurer suffices as new evidence which would change the jury's verdict.¹⁴ It therefore follows that Mr. Page has not demonstrated a miscarriage of justice that would excuse his claim from the procedural bars set forth in Rule 61 which prohibit Mr. Page from obtaining the relief he requests.

¹² See *Downes v. State*, 771 A.2d 289, 291 (Del. 2001) (finding *Larrison* inapplicable where a Rule 61 petitioner claimed the State's star witness committed perjury because the witness did not recant his testimony).

¹³ *Id.* (internal citations omitted).

¹⁴ See *Downes v. State*, 94-09-0152, 1999 WL 743629, at *7 (Del. Super. Aug. 12, 1999) *aff'd*, 771 A.2d 289 (Del. 2001).

22. Finally, Mr. Page’s constitutional rights have not been violated by any lack of access to his trial transcripts. Mr. Page cites *Entsminger v. Iowa*,¹⁵ which is inapplicable to this case. *Entsminger* stands for the premise that an indigent defendant is entitled to provision of transcripts on appeal where transcripts are necessary for effective review of the defendant’s case on appeal or in consideration of a motion for postconviction relief.¹⁶ In *Entsminger*, the petitioner “had not received the benefit of a first appeal with a full printed abstract of the record”¹⁷ because his appointed counsel failed to file the entire record of the petitioner’s case, resulting in the Supreme Court of Iowa’s review of the case on a “clerk’s transcript,” which includes only the “Information or Indictment, the Grand Jury Minutes, the Bailiff’s Oath, Statement and Instructions, various orders and judgment entries of the court.”¹⁸

23. In this case, the docket reflects the Supreme Court’s receipt of full transcripts of Mr. Page’s trial before the Court affirmed Mr. Page’s convictions. Unlike the petitioner in *Entsminger*, Mr. Page has received the benefit of a first appeal with the Supreme Court’s consideration of the entire record. Additionally, this Court has full transcripts on record.

24. It is well established that defendants are not entitled transcripts at the State’s expense for the purpose of preparing a post-trial motion.¹⁹ The Court may order the preparation of transcripts at its discretion, depending upon whether transcripts are necessary to determine nonfrivolous issues.²⁰ As this Court has stated, a ““criminal defendant who fails to articulate specific allegations of constitutional infirmity is not entitled to a transcript as a matter of right.””²¹

¹⁵ 386 U.S. 748 (1967).

¹⁶ *Id.* at 751-52.

¹⁷ *Id.* at 752.

¹⁸ *Id.* at 749.

¹⁹ *State v. Bishop*, 2006 WL 1360936, at *1 (Del. Super. May 17, 2006).

²⁰ *Id.*; Super. Ct. Crim. R. 61(d)(3).

²¹ *Id.*

25. Mr. Page claims he is entitled transcripts because the State made “improper statements telling the jury his individual impressions of the evidence during closing arguments.”²² As stated above, claims for postconviction relief which Mr. Page has not asserted by this point are barred by Rule 61(i)(3). Mr. Page presents no colorable, specific claim of a violation of his constitutional rights which would justify for the Court to either order preparation of transcripts or substantively review Mr. Page’s claim.

26. For the reasons stated, the Mr. Page’s Motion for Postconviction Relief is **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

Eric M. Davis
Judge

²² Pet’rs Mot. 27-28.