

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARIO RUIZ,)
) No. 5, 2008
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,) Cr. ID No. 89006317DI
)
 Plaintiff Below,)
 Appellee.)

Submitted: April 30, 2008

Decided: May 7, 2008

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 7th day of May 2008, it appears to the Court that:

(1) Defendant-Appellant Mario Ruiz appeals the Superior Court judge's denial of his motion for postconviction relief under Superior Court Rule 61. Ruiz is neither in custody nor subject to future custody under any sentence. On appeal, Ruiz appears to argue that he did not enter his guilty plea knowingly and intelligently because: (1) His trial counsel represented him ineffectively; and, (2) The trial judge did not provide him with adequate information regarding future deportation proceedings. In his Rule 61 motion, Ruiz requested that he be permitted to withdraw his earlier guilty plea, accept a new plea to a lesser charge, and enter into a "civil release" regarding his sentence on the original offense. A

Superior Court judge found that his claims were procedurally barred, but also determined that his substantive claims had no merit. We find that Ruiz lacks standing under Rule 61 and therefore affirm.

(2) On October 24, 1989, Ruiz pleaded guilty to assault in the second degree, as a lesser included offense of assault first degree, in exchange for dismissal of an additional weapons charge brought against him. A Superior Court judge sentenced Ruiz to five years at Level V, suspended immediately for five years at Level II probation. In 1992, the State charged Ruiz with violating the conditions of his probation. A Superior Court judge found him guilty and sentenced him to five years at Level V, suspended for five years at Level III, suspended after eighteen months for three and a half years at Level II. Ruiz did not appeal or file any postconviction motions. The Superior Court judge discharged Ruiz from probation on June 3, 1997, and the case closed.

(3) Ten years later, on October 3, 2007, Ruiz filed a motion for postconviction relief. In his motion, Ruiz submitted that “[h]e is now facing removal from the United States as a consequence of the aforesaid proceedings as well as a subsequent incident which resulted in a violation of the probation and a felony charge which would not have been a felony had not the subject of this post conviction relief position not resulted in a guilty plea.”

(4) A Superior Court judge found that his claims were procedurally barred, but also addressed the substantive merits of his claim. The judge found that Ruiz’s argument that he lacked adequate information to enter into his plea was unfounded. Ruiz had admitted that he was aware of the possibility of deportation and that the federal government would be notified of his illegal alien status.¹ The trial judge summarily dismissed Ruiz’s allegation that he did not fully understand the colloquy or that he entered into his plea without informed consent because “he responded to every question asked by the Court, either to the judge or to the court translator, without ever showing a lack of understanding.”² The Superior Court judge also found that Ruiz could not satisfy either prong of *Strickland*³ to demonstrate that his trial counsel was ineffective. Accordingly, the trial judge denied his motion. This appeal followed.

(5) We review a Superior Court judge’s denial of postconviction relief for abuse of discretion.⁴ “The Court first must consider the procedural requirements of

¹ *State v. Ruiz*, 2007 WL 4577586, at *3 (Del. Super.).

² *Id.*

³ *Strickland v. Washington*, 446 U.S. 668 (1984).

⁴ *Steckel v. State*, 882 A.2d 168, 170 (Del. 2005); *Guinn v. State*, 882 A.2d 178, 181 (Del. 2005); *Weedon v. State*, 750 A.2d 521, 527 (Del. 2000); *Outten v. State*, 720 A.2d 574 (Del. 1998).

Rule 61 before addressing any substantive issues.”⁵ Rule 61(a)(1) “governs the procedure on an application by a person in custody or subject to future custody under a sentence” of the Superior Court.⁶

(6) We have previously explained that a person loses standing to move for postconviction relief under Rule 61 where the defendant is not in custody or subject to future custody for the underlying offense or challenged sentence.⁷ The Superior Court has consistently applied the custody standard in summarily dismissing other postconviction motions.⁸ The Superior Court discharged Ruiz

⁵ *Guinn*, 882 A.2d at 181.

⁶ Super. Ct. Crim. R. 61(a)(1).

⁷ See *Pumphrey v. State*, 2007 WL 3087405, at *1 (Del. Supr.) (“The Superior Court did not err in concluding that appellant lacked standing to pursue a motion for postconviction relief because appellant had completed his sentence and thus was no longer ‘in custody or subject to future custody’ under the sentence for which postconviction relief was sought.”) (quoting Super. Ct. Crim. R. 61(a)(1)); *Epperson v. State*, 2003 WL 21692751, at *1 (Del. Supr.) (“The Superior Court did not err in concluding that Epperson’s latest postconviction petition should be denied because Epperson previously had been discharged as unimproved from the probationary sentence associated with the charges for which he sought postconviction relief. Thus, Epperson is no longer subject to custody as a result of those prior charges.”); *Summers v. State*, 2003 WL 1524104, at *1 (Del. Supr.) (“Summers was discharged from his 1993 probation as unimproved. He is no longer in custody as a result of his 1993 conviction and thus is not entitled to seek postconviction relief.”); *Guinn v. State*, 1993 WL 144874, at *1 (Del. Supr.) (“Guinn is no longer in custody for the assault in a detention facility offense. Guinn completed serving this sentence on January 27, 1988 and cannot seek postconviction relief from this sentence.”).

⁸ See *State v. Hinson*, 2006 WL 337031, at *2 (Del. Super.) (“All courts in Delaware that have considered whether postconviction relief under Rule 61 is potentially available to a person who is not ‘in custody or subject to future custody’ for the challenged sentence have agreed that such relief under Rule 61 is not available.”) (citing cases); see also, e.g., *State v. Hall*, 2006 WL 2126298, at *2 (Del. Super.) (“[S]ince defendant no longer is in custody nor is he subject to future custody, . . . [Rule 61] relief is not available.”); *State v. Jones*, 2001 WL 112057, at *1

from probation on June 3, 1997, he is not subject to any future custody for these original charges, and thus lacks standing to seek Rule 61 relief. We affirm the denial of his motion for postconviction relief without reaching his substantive claims.

NOW, THEREFORE, IT IS ORDERED that the Order of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

(Del. Super.) (“Because Jones has finished serving the sentence imposed upon him by this Court and is not subject to future custody under that sentence, Jones motion pertaining to the sentence is moot.”); *State v. Drakes*, 1999 WL 1222689, *1 (Del. Super.) (“Drakes completed his entire sentence on August 3, 1999 and cannot seek postconviction relief from this sentence.”). *See generally State v. Davila*, 2003 WL 21007093, *2 (Del. Super.) (noting that “[p]ursuant to Rule 61(a)(1), the Court need not even consider Defendant's motion because he is neither a ‘person in custody’ nor ‘subject to future custody’ under a sentence of this Court” but addressing “his claims of fundamental constitutional violations”).