

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL A. ELEY,	§
	§ No. 551, 2003
Defendant Below,	§
Appellant,	§
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID No. 0108017501
Plaintiff Below,	§
Appellee.	§

Submitted: January 5, 2004
Decided: January 27, 2004

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

ORDER

This 27th day of January 2004, it appears to the Court that:

(1) On November 10, 2003, the appellant, Michael A. Eley, filed a *pro se* notice of appeal from an order of the Superior Court dated October 24, 2003. The Superior Court's order denied Eley's motion to compel production of certain materials from the Assistant Public Defender who had represented Eley at his guilty plea proceedings in June 2002. Eley sought the materials in order to present a postconviction petition. The Clerk of this Court issued a notice to Eley to show cause why the appeal should not be dismissed on the ground that the Superior Court's order was an unappealable, interlocutory order in a criminal case. Eley

filed a response to the notice to show cause, and the State filed a reply memorandum in support of dismissal.

(2) After careful consideration of the parties' respective positions, it is manifest to the Court that Eley's appeal must be dismissed. It is well-established that a defendant must first file his postconviction motion pursuant to Superior Court Criminal 61 and make his request for materials in conjunction with a pending proceeding. Until Eley files, and the Superior Court finally rules upon, his postconviction petition, the denial of Eley's motion for production remains an interlocutory order that is not subject to this Court's review.*

NOW, THEREFORE, IT IS HEREBY ORDERED that the within appeal is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

* *In re Middlebrook*, 2000 WL 975060 (Del. May 30, 2000) (citing *Gottlieb v. State*, 697 A.2d 400, 401-02 (Del. 1997)).