IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE PRINGLE,	§	
	§	No. 694, 2011
Defendant Below-Appellant	§	
	§	Court Below: Superior Court of
v.	§	the State of Delaware in and for
	§	New Castle County
STATE OF DELAWARE	§	
	§	No. 0205013378
Plaintiff Below-Appellee	§	

Submitted: February 7, 2013
Decided: March 13, 2013

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

O R D E R

On this 13th day of March 2013, it appears to the Court that:

(1) Defendant-Below/Appellant Tyrone Pringle appeals from the Superior Court's denial of his motion for post-conviction relief. Pringle raises one claim on appeal: that the Superior Court erred in its analysis of the standard in *United States v. Cronic*[1] and the factual inferences the court used to justify its previous decision to permit appellant to withdraw his guilty pleas. We find Pringle's claim is procedurally barred under Rule 61(i)(4) and affirm on this alternative ground.[2]

[1] *United States v. Cronic*, 466 U.S. 648 (1984).
[2] *Mathis v. State*, 996 A.2d 794, 2010 WL 2197625, at *2 n. 10 (Del. 2010) ("[T]his Court may properly affirm the Superior Court's judgment on alternative grounds.") (*citing Unitrin, Inc. v. Amer. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995)).

(2) New Castle City Police arrested Tyrone Pringle on May 18, 2002. On June 17, 2002, the New Castle County grand jury issued an eight-count indictment against Pringle on the following charges: Burglary in the First Degree; Possession of a Firearm During the Commission of a Felony ("PFDCF"); Conspiracy in the Second Degree; Criminal Impersonation; Resisting Arrest, and Escape in the Third Degree.

(3) On January 20, 2005, the day of his trial, Mr. Pringle signed a guilty plea agreement to charges of Burglary in the Third Degree and PFDCF. When the Superior Court engaged in a plea colloquy with Pringle, Pringle indicated that he did not desire to plead guilty, and so the court did not enter the plea. Several hours later that same day, Pringle entered a plea of guilty to Burglary in the Third Degree and Possession of a Deadly Weapon During the Commission of a Felony ("PDWDCF").

(4) On March 20, 2005, Pringle wrote and mailed a letter to the trial judge stating:

> Your honor, when I stood before you on 1-20-05 you asked me why I was so hesitant on excepting [sic] my plea (for burglary 3rd & P.D.W.) [sic] For One: I never received my discovery & I only received part of my rule 16 minutes before my trial was to begin. My lawyer told me, that I would receive less time by excepting [sic] this plea, but I have become very uncomfortable with admitting a weapon I did not have. These are the reasons why I'm asking you to <u>please</u> allow me to withdrawal [sic] this plea.

> In short, your honor, during the 29 month's [sic] I spent in Federal Prison before I was transferred here...I made a lot of positive change's [sic] in my life. An on 1-20-05 when I excepted [sic] that plea in front of you, it went against my better judgment. Thank you![3]

Pringle's attorney was unaware of his client's March 20 letter to the judge until the day of sentencing—April 1, 2005—when the State referenced the letter:

> Prosecutor: Good morning, Your Honor. I need to find out first if Mr. Pringle wants to withdraw his guilty plea. The State moves the sentencing or withdraw of the plea of Tyrone Pringle.
>
> Defense Counsel: This is news to me, Your Honor.
>
> The Court: I'll show you the letter I received, Mr. [Defense Counsel]. I'll hand it to the bailiff.

The Court then directly asked Mr. Pringle about his intent:

> The Court: Mr. Pringle, the Court has received from you a letter dated March 20th in which you asked to withdraw your guilty plea.
>
> Pringle: Yes.
>
> The Court: Do you want to do that?
>
> Pringle: Yes.
>
> The Court: Okay. I'll allow you to do that. The matter will be set for trial. The plea is undone. You'll go to trial as originally charged. [4]

[3] Appellant's Exhibit "A," at 2.
[4] Appendix to Appellant's Opening Brief at A23.

(5) On August 23, 2005, the Superior Court held a two-day jury trial at which Pringle was found guilty of Burglary in the First Degree, PFDCF, Theft, Criminal Impersonation, and Resisting Arrest. The Superior Court sentenced Pringle to a total non-suspended period of nine years and six months in prison. Pringle filed a direct appeal to this Court, claiming that the Superior Court erred in allowing him to withdraw his guilty plea. We held, pursuant to Rule 32(d), that it was proper for the Superior Court to permit the withdrawal of a plea "upon a showing by the defendant of any fair and just reason." [5] "[G]iven the timing of Pringle's motion, the State's lack of opposition to it, and the reasons Pringle set forth for his request," we found no reversible error in the Superior Court's acceptance of Pringle's withdrawal.[6]

(6) Pringle next filed a motion for post-conviction relief alleging ineffective assistance of counsel. Pringle's trial counsel filed an affidavit in response to Pringle's motion. On April 22, 2009, a Commissioner issued a Report and Recommendation, for which Pringle sought *de novo* review by a Superior Court Judge. The Superior Court Judge adopted the Commissioner's Report and Recommendation and denied Pringle's motion for post-conviction relief.[7] Pringle appealed to this Court *pro se*. This Court reversed and remanded this matter for an

[5] *Pringle v. State*, 941 A.2d 1019, 2007 WL 4374197, at *2 (Del. Dec. 17, 2007).
[6] *Id.*
[7] *Pringle v. State*, 2009 WL 1463627 (Del. Super. May 19, 2009).

evidentiary hearing,[8] and ordered the Superior Court, on remand, to appoint counsel to represent Pringle, and apply the analysis found in *United States v. Cronic* rather than that of *Strickland v. Washington*.[9]

(7) After new counsel was appointed, the Superior Court held an evidentiary hearing. Following post-hearing briefing, the Superior Court denied Pringle's Motion for Post-Conviction relief.[10] This appeal followed. Prior to oral argument, we requested and received supplemental briefing on the applicability of recent U.S. Supreme Court decisions *Lafler v. Cooper* and *Missouri v. Frye* to this case. After oral argument, we requested and received additional briefing on "Whether the Appellant's claim that the Superior Court violated Superior Court Criminal Rule 47 is procedurally foreclosed, as formerly adjudicated by this Court on direct appeal, under Criminal Rule 61(i)(4)."

(8) This Court reviews the denial of a motion for post-conviction relief for abuse of discretion.[11] To the extent that a claim raises a constitutional question, this Court reviews such claims *de novo*.[12]

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[8] *Pringle v. State*, 996 A.2d 794, 2010 WL 2278272, at *2-3 (Del. June 7, 2010).
[9] *Id.* (*citing United States v. Cronic*, 466 U.S. 648 (1984); *Strickland v. Washington*, 466 U.S. 668 (1984)).
[10] *State v. Pringle*, 2011 WL 6000834, at *1 (Del. Super. Nov. 17, 2011). The Superior Court mistakenly captioned its Memorandum Opinion as a denial of Pringle's motion to withdraw his guilty plea. This clerical error has no bearing on the court's conclusion.
[11] *Swan v. State*, 28 A.3d 362, 382 (Del. 2011); *Zebroski v. State*, 12 A.3d 1115, 1119 (Del. 2010).
[12] *Flonnory v. State*, 893 A.2d 507, 515 (Del. 2006); *Hall v. State*, 788 A.2d 118, 123 (Del. 2001).

(9) At the heart of Pringle's claim is the manner in which he was permitted to withdraw his plea. Pringle contends—as he did in his direct appeal[13]—that the Superior Court erred when it disregarded Superior Court Criminal Procedure Rule 47, which states in part that:

> The court will not consider *pro se* applications by defendants who are represented by counsel unless the defendant has been granted permission to participate with counsel in the defense.[14]

Pringle was represented by counsel at the time he drafted and sent the request to the trial judge. He wrote his letter without the aid, knowledge, or other participation of counsel. Pringle contends that Rule 47 precluded the court from entertaining this *pro se* letter as a valid motion. We asked the parties for supplemental briefing on whether the Rule 47 claim was procedurally barred as previously adjudicated. Postconviction relief may not be sought on:

> Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding…unless reconsideration of the claim is warranted in the interest of justice.[15]

(10) We have stated that "[i]n order to invoke the 'interest of justice' provision…a movant must show that subsequent legal developments have revealed

[13] Brief for Appellant at 23-24, *Pringle v. State*, 941 A.2d 1019, (Del. Dec. 17, 2007) (No. 87, 2006), 2007 WL 4374197.
[14] Del. Super. Ct. Crim. R. 47.
[15] Del. Super. Ct. Crim. R. 61(i)(4).

that the trial court lacked the authority to convict or punish [the defendant]."[16] In *Weedon v. State*, we stated that the 61(i)(4) bar does not apply when the previous ruling was "clearly in error" or when "there has been an important change in circumstances, in particular, the factual basis for the issue previously posed."[17] We will not reconsider an issue simply because a defendant has "refined or restated" a claim.[18]

(11) On direct appeal, this Court addressed whether the trial court's grant of Pringle's motion to withdraw his appeal was proper. We held:

> In this case, Pringle wrote to the Superior Court two months prior to sentencing and requested to withdraw his plea because, as he put it, he was not comfortable admitting to possessing a weapon that he did not have. On the date scheduled for sentencing, the Superior Court asked Pringle if he still wished to withdraw his plea. Pringle responded affirmatively, and the Superior Court granted his request, which was unopposed by the State. Given the timing of Pringle's motion, the State's lack of opposition to it, and the reasons Pringle set forth for his request, we find no plain error in the Superior Court's decision to grant Pringle's motion permitting him to exercise his constitutional right to a jury trial.[19]

"Ground Seven" of Pringle's opening brief on direct appeal was titled "The Court abused its discretion by allowing the Defendant to withdraw his guilty plea without conducting an inquiry." Citing Rule 47, Pringle stated, that he "did not have the

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[16] *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990).
[17] *Weedon v. State*, 750 A.2d 521, 527 (Del. 2000).
[18] *Skinner v. State*, 607 A.2d 1170, 1172 (Del. 1992) (*quoting Riley v. State*, 585 A.2d 719, 721 (Del. 1990)).
[19] *Pringle*, 2007 WL 4374197 at *2.

[Superior] Court's approval to submit applications."[20] Pringle then argued, under Rule 32, that the trial judge should have denied his request to withdraw the plea. We found no merit to his appeal. The factual background has not changed. Because our ruling was not "clearly in error" the procedural bar of Rule 61(i)(4) applies.

(12) We have held that while defendant has no *right* to have his *pro se* motions entertained by the court when he is represented by counsel; it is within the trial court's discretion to entertain the motion.[21] By its terms, Rule 47 contemplates that permission may be granted for hybrid representation. We have granted trial courts broad discretion in their choice of whether or not to entertain a represented defendant's *pro se* motions.[22] "The decision to allow a criminal defendant to participate in his own defense, along with his counsel, in 'hybrid representation' is a matter committed to the sound discretion of the trial court."[23]

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[20] *Supra* note 13.

[21] *See In re Haskins*, 551 A.2d 65, 66 (Del. 1988) ("The decision to allow a criminal defendant to participate in his own defense, along with his counsel, in "hybrid representation" is a matter committed to the sound discretion of the trial court. …A criminal defendant who is represented by counsel has no right to participate pro se as co-counsel. …[the defendant] has neither requested nor been granted the *discretionary* opportunity to participate in his own representation." (emphasis added) (internal citations omitted)).

[22] *Id.* (finding that while the Superior Court had no duty to consider the defendant's *pro se* motions, it is within the Superior Court's discretion to accept hybrid representation of a defendant, proceeding in part *pro se*, and his designated counsel).

[23] *Id.* (*citing Hooks v. State*, 416 A.2d 189, 199 (Del. 1980); *United States v. Mosely*, 810 F.2d 93, 97-98 (6th Cir.), *cert. denied*, 484 U.S. 841, 108 S.Ct. 129, 98 L.Ed.2d 87 (1987); *United States v. Norris*, 780 F.2d 1207, 1211 (5th Cir. 1986); *United States v. Tucker*, 773 F.2d 136, 141 (7th Cir.1985), *cert. denied*, 478 U.S. 1022, 106 S.Ct. 3338, 92 L.Ed.2d 742 (1986); *United States v. Halbert*, 640 F.2d 1000, 1009 (9th Cir.1981); *United States v. Williams*, 534 F.2d 119,

Even if Pringle's initial motion did not *have* to be considered, the trial court's decision to do so was within its discretion. Pringle has not shown that the Superior Court erred in considering his *pro se* motion to withdraw his guilty plea with counsel present. Nor has he demonstrated that our affirmance of his conviction in the face of his Rule 47 challenge was clearly in error.

(13) Pringle's remaining arguments are based on his claim that he received ineffective assistance of counsel during his plea withdrawal hearing. However, each of these claims is necessarily subsumed under a generalized attack on the procedures employed by the trial court in allowing Pringle to withdraw his plea. Once Pringle was permitted to be heard on the merits of his motion, it fell within the wide range of reasonable professional assistance for his counsel to allow Pringle to be heard.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

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123 (8th Cir.), *cert. denied*, 429 U.S. 894, 97 S.Ct. 255, 50 L.Ed.2d 177 (1976); *United States v. Hill*, 526 F.2d 1019, 1024 (10th Cir.1975), *cert. denied*, 425 U.S. 940, 96 S.Ct. 1676, 48 L.Ed.2d 182 (1976)).