

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

March 29, 2016

John M. Franklin
SBI No. 00214419
SCI
P.O. Box 500
Bldg. Merit East
Georgetown, DE 19947

RE: *State of Delaware v. John M. Franklin*, Def. ID No. 0304010407C

DATE SUBMITTED: March 3, 2016

Dear Mr. Franklin:

Defendant John M. Franklin (“Defendant”) has filed his fifth Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”).

On February 25, 2004, following a jury trial, Defendant was convicted of five counts of Rape in the First Degree, and one count each of Terroristic Threatening and Endangering the Welfare of a Child. Defendant was sentenced as follows: for five counts of Rape in the First Degree, a total of one hundred twenty-five years at Level V, of which seventy-five years are mandatory; for Terroristic Threatening, one year at Level V; and for Endangering the Welfare of a Child, one year at Level V, followed by six months of probation at Level III. Defendant appealed to the Delaware Supreme Court and argued that the trial court erred with respect to the

admission of certain evidence and testimony. The Supreme Court affirmed this Court's decision, and the judgment of conviction became final on March 22, 2005.¹

On March 3, 2016, Defendant filed his fifth Motion for Postconviction Relief.² The first step this Court takes in addressing a postconviction motion is to determine whether the procedural bars of Rule 61 prevent its consideration or whether the defendant has overcome these bars.³

¹ *State v. Franklin*, 2005 WL 528674, at *1 (Del. Mar. 2, 2005).

² See *State v. Franklin*, 2005 WL 3193713 (Del. Super. Nov. 29, 2005), *aff'd*, 2006 WL 1374675 (Del. May 17, 2006) (denying Defendant's first motion for postconviction relief); *State v. Franklin*, 2007 WL 2823328 (Del. Super. Sept. 26, 2007), *aff'd*, 2008 WL 361143 (Del. Feb. 12, 2008) (denying Defendant's second motion for postconviction relief); *State v. Franklin*, 2012 WL 6914478 (Del. Super. Nov. 7, 2012), *aff'd*, 2013 WL 3149070 (Del. June 18, 2013) (denying Defendant's third motion for postconviction relief); *State v. Franklin*, 2014 WL 1724350 (Del. Super. Apr. 30, 2014), *aff'd*, 2014 WL 3658633 (Del. July 22, 2014) (denying Defendant's fourth motion for postconviction relief).

³ The applicable version of Super. Ct. Crim. R. 61(i) provides:

Bars to Relief. (1) *Time limitation*. A motion for postconviction relief may not be filed more than one year after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.

(2) *Successive motions*. (i) No second or subsequent motion is permitted under this Rule unless that second or subsequent motion satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule. (ii) Under paragraph (2) of subdivision (b) of this Rule, any first motion for relief under this rule and that first motion's amendments shall be deemed to have set forth all grounds for relief available to the movant. That a court of any other sovereign has stayed proceedings in that court for purpose of allowing a movant the opportunity to file a second or subsequent motion under this rule shall not provide a basis to avoid summary dismissal under this rule unless that second or subsequent motion satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule.

(3) *Procedural default*. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, 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.

(4) *Former adjudication*. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in

This fifth Motion for Postconviction Relief is barred by Rule 61(i)(2) unless Defendant has:

- (i) [pled] . . . with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which [she] was convicted; or
- (ii) [pled] . . . with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant's case and renders the conviction or death sentence invalid.⁴

Defendant has failed to make this showing. Consequently, the Motion is **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

cc: Prothonotary's Office
Adam Gelof, Esquire
Carole J. Dunn, Esquire

a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred.

(5) *Bars inapplicable.* The bars to relief in paragraphs (1), (2), (3), and (4) of this subdivision shall not apply either to a claim that the court lacked jurisdiction or to a claim that satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule.

⁴ Super. Ct. Crim. R. 61(i)(5); Super. Ct. Crim. R. 61(d)(2).