

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)
)
) ID No. 0808015453A
) In and for Kent County
v.)
)
TYRONE J. MARTIN,)
)
)
) Defendant.

Submitted: April 27, 2016
Decided: June 28, 2016

*Upon Consideration of Defendant’s Second Motion For Postconviction Relief
Pursuant to Superior Court Criminal Rule 61*
DENIED

ORDER

On this 28th day of June, 2016, upon consideration of the Defendant’s Second Motion For Postconviction Relief, the Commissioner’s Report and Recommendation and the record in this case, it appears that:

1. The Defendant, Tyrone J. Martin (“Martin”), pled guilty on March 17, 2009, to one count of Trafficking in Cocaine 10 - 50 grams, 16 *Del. C.* §4753A and one count of Possession of a Firearm During the Commission of a Felony, 11 *Del. C.* §1447A. In exchange for Martin’s plea, the State entered *nolle prosequis* on the remaining charges and agreed to a pre-sentence investigation and to cap its recommended sentence at eight years incarceration. The Court sentenced Martin to a total of fifteen years incarceration, suspended after serving six years with credit for time served, followed by probation.

2. In September 2014, while on probation, Martin tested positive for Oxycodone and Opiate use and in October 2014, a search of Martin's residence uncovered more than 400 bags of heroin, which resulted in Martin's arrest on new criminal charges. A report was filed charging Martin with violating probation. The State ultimately dismissed the new criminal charges; however, Martin's probation officer filed a supplemental violation report, alleging that Martin had tested positive for drug use on May 28, 2015 and July 9, 2015, and that he had committed a curfew violation on July 7, 2015.

3. Martin's counsel filed a motion to suppress the evidence that had been seized during the search in October 2014, and a hearing was held on August 12, 2015, which the Court denied the motion. The Court sentenced Martin to ten years and four months at Level V incarceration, suspended after four years, followed by probation.

4. Next, the Defendant filed an appeal with the Supreme Court. Pending the appeal, Martin filed, *pro se*, a motion for correction of an illegal sentence, requesting a modification of his sentence. Then Defendant filed the pending Second Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61, on December 15, 2015 while his direct appeal was also still pending. On February 10, 2016, the Supreme Court denied Martin's appeal. In his motion Martin raises two grounds for relief: 1) ineffective assistance of counsel; and 2) the defendant's rights against unlawful searches and seizures were violated when probation searched his residence without following proper procedures of SOP 7.19 as set forth through DOC policies and procedures.

5. The Court referred this motion to Superior Court Commissioner Andrea M.

State v. Martin
ID No. 0808015453A
June 28, 2016

Freud pursuant to 10 *Del. C.* §512(b) and Superior Court Criminal Rule 62 for proposed findings of facts and conclusions of law.

6. The Commissioner has filed a Report and Recommendation concluding that the Second Motion For Postconviction Relief should be denied, because it is procedurally barred and completely meritless.

7. The Defendant filed a Motion to Amend Motion for Postconviction Relief and a Second Motion to Amend Motion for Postconviction Relief. The Motions to Amend were *denied*, because they were filed as untimely as the briefing schedule had been completed. Further, the Commissioner had issued her Report and Recommendation prior to the Motions to Amend.

NOW, THEREFORE, after *de novo* review of the record in this action, and for reasons stated in the Commissioner's Report and Recommendation dated March 14, 2016,

IT IS ORDERED that the Commissioner's Report and Recommendation is adopted by the Court, and the Defendant's Second Motion for Postconviction Relief is **DENIED**.

/s/ Robert B. Young
J.

RBV/lmc
oc: Prothonotary
cc: The Honorable Andrea M. Freud
Kathleen A. Dickerson, Esq.
Deborah L. Carey, Esq.
Tyrone J. Martin, JTVCC