

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 Plaintiff,)
)
 v.) Cr. ID No. 1310001581
)
 SEAN R. GREEN,)
)
 Defendant.)
)

Submitted: October 6, 2016
Decided: October 11, 2016

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE DENIED.**

Matthew C. Bloom, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Sean R. Green, Howard R. Young Correctional Center, Wilmington, Delaware,
pro se.

PARKER, Commissioner

This 11th day of October 2016, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND AND PROCEDURAL HISTORY

1. On November 25, 2013, Defendant Sean Green was indicted on six charges arising out of events that occurred on October 3, 2013. There were three charges stemming from an attempted robbery (Attempted Robbery First Degree, Possession of a Firearm During the Commission of a Felony, and Conspiracy Second Degree). These charges were subsequently dropped. The three remaining charges, unrelated to the robbery charges, involved gun related charges: Carrying a Concealed Deadly Weapon ("CCDW"), Possession of a Firearm by a Person Prohibited ("PFBPP"), and Possession of Ammunition by a Person Prohibited ("PABPP").

2. On May 21, 2014, a Superior Court jury found Defendant guilty of the three gun related charges: CCDW, PFBPP, and PABPP. Defendant was sentenced to a total of twenty-six years of Level V incarceration, suspended after eleven years, for decreasing levels of supervision.

3. Defendant filed a direct appeal to the Delaware Supreme Court. On July 14, 2015, the Delaware Supreme Court affirmed the conviction and sentence of the Superior Court.¹

4. On January 19, 2016, Defendant filed a Motion for Correction of Illegal Sentence and on January 22, 2016, Defendant filed a Motion for Sentence Reduction. By Order dated May 18, 2016, the court denied Defendant's motions for sentence modifications

¹ *Green v. State*, 2015 WL 4351049 (Del.).

concluding that the sentence was appropriate for all the reasons stated at the time of sentencing.²

FACTS

5. On October 3, 2013, a Wilmington police officer was responding to a robbery victim's report that two men who had stolen a victim's cell phone were standing at the corner of 24th and North Market Street.³ When the officer arrived, the officer saw Defendant and another man. The officer ordered both men to stop. The unidentified man ran away. Defendant walked away, and as he did so, he turned his body in a way that prevented the officer from seeing his right hip and checked his waistband with his hands. Based on these observations, the officer believed Defendant was attempting to conceal a gun.⁴

6. Despite additional commands to stop, Defendant continued to walk away from the police officer.⁵ The officer observed Defendant reach the back of a Ford Explorer, duck down, and throw an object under the vehicle that made a loud, metallic sound when it hit the ground. The officer then seized Defendant and placed him in handcuffs. When the officer looked under the Ford Explorer, he saw a gun. The gun was a loaded .45 semi-automatic.⁶

7. The handgun was processed for DNA and fingerprints. A fingerprint that matched Defendant's fingerprint was located on the handgun's magazine. This indicated that at some point Defendant had handled the magazine located inside the handgun.⁷

² Superior Court Docket No. 50.

³ *Green v. State*, 2015 WL 4351049, at *1, fnt 3 (Del.).

⁴ *Green v. State*, 2015 WL 4351049, at *1 (Del.).

⁵ *Green v. State*, 2015 WL 4351049, at *1 (Del.).

⁶ *Green v. State*, 2015 WL 4351049, at *1 (Del.).

⁷ *Green v. State*, 2015 WL 4351049, at *1-2 (Del.).

8. A DNA comparison between the DNA taken from the gun and Defendant's DNA sample could not be performed because there was too many individuals' DNA in the swab taken from the gun.⁸

9. The parties stipulated that due to a prior conviction Defendant was not legally permitted to possess a firearm or ammunition.⁹

10. Prior to trial, the State dropped the robbery charges. The trial proceeded on the unrelated firearm charges. The jury found Defendant guilty of CCDW, PFBPP, and PABPP.¹⁰

DEFENDANT'S RULE 61 MOTION

11. On January 19, 2016, Defendant filed the subject motion for postconviction relief.¹¹ In the subject motion, Defendant raises a number of claims. Defendant claims that his counsel provided ineffective assistance, that the court erred in failing to give a *Lolly* instruction, that the State failed to preserve discoverable evidence, and that the court erred in denying Defendant's motion for new counsel.¹²

12. Before making a recommendation, the Commissioner enlarged the record by directing Defendant's trial counsel to submit an Affidavit responding to Defendant's ineffective assistance of counsel claims. Thereafter, the State filed a response to the motion. Finally, Defendant filed a reply thereto.¹³

13. In Defendant's reply, he elaborated on his claim relating to the video surveillance on the night of the incident. Following the receipt of Defendant's reply, the court

⁸ *Green v. State*, 2015 WL 4351049, at *2 (Del.).

⁹ *Green v. State*, 2015 WL 4351049, at *2 (Del.).

¹⁰ *Green v. State*, 2015 WL 4351049, at *2 (Del.).

¹¹ Superior Court Docket No. 38.

¹² Superior Court Docket No. 38.

¹³ Super.Ct.Crim.R. 61(g)(1) and (2).

requested¹⁴, and the State provided, a copy of the surveillance video produced during discovery of the night at issue.

14. Prior to addressing the substantive merits of any claim for postconviction relief, the court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61.¹⁵ If a procedural bar exists, then the claim is barred, and the Court should not consider the merits of the postconviction claim.¹⁶

15. Rule 61 (i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;¹⁷ (2) any basis for relief must be asserted in the first timely filed motion for postconviction relief absent exceptional circumstances (ie. discovery of new evidence or new rule of constitutional law) warranting a subsequent motion being filed; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules unless the movant shows prejudice to his rights and cause for relief; and (4) any basis for relief must not have been formally adjudicated in any proceeding. The bars to relief however do not apply to a claim that the court lacked jurisdiction or to a claim that new evidence exists that movant is actually innocent or that there is a new law, made retroactive, that would render the conviction invalid.¹⁸

16. In accordance with the procedural mandates, Defendant was required to raise his claims, with the exception of his ineffective assistance of counsel contentions, on direct appeal.¹⁹ Of the claims raised by Defendant, Grounds Two, Three and Four are procedurally barred. Either Defendant raised these claims on direct appeal and they are

¹⁴ Superior Court Docket No. 54, court letter dated September 19, 2016 requesting surveillance video.

¹⁵ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹⁶ *Id.*

¹⁷ If a final order of conviction occurred on or after July 1, 2005, the motion must be filed within one year. See, Super.Ct.Crim.R. 61(i)(1)(July 1, 2005).

¹⁸ Super.Ct.Crim.R. 61 (effective June 4, 2014).

¹⁹ See, *Malin v. State*, 2009 WL 537060, at *5 (Del.Super.); *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

now procedurally barred by Rule 61(i)(4), as previously adjudicated, or Defendant failed to raise these claims on direct appeal and they are now procedurally barred by Rule 61(i)(3), for failing to raise the claim(s) on direct appeal.

17. Defendant's ineffective assistance of counsel claims, raised in Ground One, are not procedurally barred because a Rule 61 motion is the appropriate vehicle for raising these claims.²⁰

18. In addition to Defendant's Grounds Two, Three and Four being procedurally barred, all of Defendant's claims, including Ground One, his ineffective assistance of counsel claims, are without merit.

19. Defendant's specific claims are addressed below.

Ground One: Ineffective Assistance of Counsel Claims

20. In Ground One, Defendant claims that his trial counsel was ineffective for several reasons. Defendant claims that his counsel was ineffective for failing to present the Downtown Visions surveillance video to the jury; for not filing a suppression motion; for failing to challenge the State witness on fingerprint testimony; for failing to call an expert witness on fingerprint matching; and for failing to properly communicate with Defendant.

21. In order to prevail on an ineffective assistance of counsel claim, Defendant must meet the two-pronged *Strickland* test by showing that: (1) counsel performed at a level "below an objective standard of reasonableness" and that, (2) the deficient performance prejudiced the defense.²¹ The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires him to show that there is a reasonable probability that, but for

²⁰ *Id.*

²¹ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

defense counsel's unprofessional errors, the outcome of the proceedings would have been different.²²

22. Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.²³ Although not insurmountable, the *Strickland* standard is highly demanding and leads to a strong presumption that counsel's conduct fell within a wide range of reasonable professional assistance.²⁴ Moreover, there is a strong presumption that defense counsel's conduct constituted sound trial strategy.²⁵

23. In *Harrington v. Richter*,²⁶ the United States Supreme Court explained the high bar that must be surmounted in establishing an ineffective assistance of counsel claim. In *Harrington*, the United States Supreme Court explained that representation is constitutionally ineffective only if it so undermined the proper functioning of the adversarial process that the defendant was denied a fair trial.²⁷ The challenger's burden on an ineffective assistance of counsel claim is to show that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. It is not enough to show that the errors had some conceivable effect on the outcome of the proceeding. Counsel's errors must be so serious as to deprive the defendant of a fair trial.²⁸

24. The United States Supreme Court explained that a defendant is not guaranteed perfect representation, only a reasonably competent attorney. There is no expectation

²² *Id.* at 687-88, 694.

²³ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

²⁴ *Albury v. State*, 551 A.2d 53, 59 (Del. 1988); *Salih v. State*, 2008 WL 4762323, at *1 (Del. 2008).

²⁵ *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

²⁶ *Harrington v. Richter*, 131 S.Ct. 770 (2011).

²⁷ *Id.*, at * 791.

²⁸ *Id.*

that competent counsel will be a flawless strategist or tactician. A defense attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.²⁹

25. Counsel's representation must be judged by the most deferential of standards. The United States Supreme Court cautioned that reviewing courts must be mindful of the fact that unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with his client, with opposing counsel, and with the judge.³⁰

26. Turning now to the subject case, whether or not defense counsel was a flawless strategist, it is clear from a review of the record that defense counsel provided active and capable advocacy. Defense counsel did not have much to work with. The evidence against Defendant was overwhelming. A police officer ordered Defendant to stop while investigating an unrelated crime (the subsequently dropped robbery charges). Defendant ignored the officer's commands and walked away. The police officer observed Defendant reach the back of a Ford Explorer, duck down, and throw an object under the vehicle. The officer heard the object making a loud, metallic "thud" sound. The officer looked under the parked car and saw a loaded handgun. A fingerprint matching Defendant's was located on the handgun's magazine.

Ineffective Assistance Claim Relating to Surveillance Video

27. Defendant first contends that his counsel was ineffective because his counsel did not present the Downtown Visions surveillance video to the jury. In support of this claim, Defendant contends that the video was favorable to him and that the outcome of

²⁹ *Id.*, at *787-792

³⁰ *Id.* at 787-88.

the trial would be different if the video was present. In his reply, Defendant explains that the video footage of the firearm arrest should have been shown to the jury.

28. The court requested a copy of the surveillance video from the night at issue. The surveillance video did not depict anything regarding the incident at issue. Neither the State nor defense counsel showed the video to the jury at trial. There was no footage of the firearm arrest, and therefore, nothing could have been shown to the jury on this issue.

29. In response to Defendant's claim, Defendant's trial counsel explained that the video at issue was of very poor quality and was of marginal, if any, value.³¹

30. Defendant has not substantiated his claim that the video would have affected the outcome of the trial in any respect. This claim is without merit.

Ineffective Assistance Claim Relating to Not Filing a Suppression Motion

31. Defendant claims that counsel was ineffective for not filing a suppression motion after the robbery charges were dropped. Defendant contends that after the robbery charges were dropped, "due to false allegations", a motion to suppress the recovered firearm should have been filed "due to no probable cause."

32. In response to Defendant's claim, Defendant's trial counsel explained that the police officer had stopped Defendant based on a 911 dispatch call that two men who had stolen a victim's cell phone were standing at the corner of 24th and North Market Street. Defendant was standing on the corner of 24th and North Market Street and he fit the description given by the caller of the assailant.³² Defendant's counsel did not file a suppression motion because there "was simply no legal basis to file a motion to suppress

³¹ Affidavit of Defense Counsel in response to Defendant's Rule 61 Motion, at *2.

³² Affidavit of Defense Counsel in response to Defendant's Rule 61 Motion, at *2.

as the officer had reasonable grounds to stop and detain Mr. Green pursuant to 11 *Del. C* § 1902(a).”³³

33. This statute, 11 *Del. C* § 1902(a), provides that a police officer may stop any person in a public place who the officer has reasonable grounds to suspect has committed a crime and may demand the person’s identification. In this case, the police officer had reasonable grounds to suspect that Defendant had committed a crime, as he fit the description of the alleged assailant who had stolen a victim’s cell phone. Defendant, when ordered to stop by the police officer, disregarded the officer’s commands and walked away. The officer never lost sight of Defendant as he reached the back of a Ford Explorer, ducked down, and threw an object under the vehicle. The officer heard the object that Defendant threw make a loud, metallic “thud” sound. The officer looked under the parked car and saw a loaded handgun. Counsel determined that there was no legal basis to support a suppression motion under the facts of this case.

34. Counsel having determined that there was not a good faith basis to file a suppression motion cannot be deemed ineffective for not having done so.

Ineffective Assistance Regarding AFIS Fingerprint Result

35. Defendant claims that counsel was ineffective for failing to cross-examine a State witness on why the initial run of a fingerprint lifted from the recovered firearm did not return a match from the Automated Fingerprint Identification System (“AFIS”). Defendant also claims that counsel was ineffective for not retaining an expert to testify how a fingerprint matching through AFIS is properly used.

³³ Affidavit of Defense Counsel in response to Defendant’s Rule 61 Motion, at *2.

36. When Defendant's fingerprint on the gun magazine was run through the AFIS no match was produced. However, a manual fingerprint comparison did, in fact, reveal that Defendant's fingerprint matched the fingerprint on the gun magazine.

37. Defendant's counsel was aware of the lack of the fingerprint match in AFIS but knew that depending on the orientation of the fingerprint in the database, AFIS might not produce a fingerprint match.³⁴ Counsel explained to Defendant at trial that the reason there was not an initial fingerprint hit with AFIS was due to the way in which the print was loaded into the computer. If a fingerprint is loaded "upside down" the computer is less likely to locate a match in the database on the first run.³⁵

38. Defendant's counsel was also aware that Defendant's fingerprint did match the fingerprint on the gun magazine in the manual fingerprint comparison.³⁶

39. Defendant's counsel did not cross-examine the State witness on the lack of the AFIS fingerprint match nor did he retain an expert to emphasize this point because he did not believe it would be helpful to emphasize the AFIS results with the jury. First, Defendant's fingerprint matched the fingerprint on the gun magazine in the manual fingerprint comparison. Second, the lack of an AFIS fingerprint match was due to the fact that the fingerprint was loaded "upside down". Third, the fact that Defendant's fingerprints were already in the AFIS system due to a prior arrest was not a fact that counsel wanted to highlight to the jury.

40. Defense counsel concluded that an expert would only corroborate the State's witnesses' testimony regarding AFIS and cross-examination of the State's witnesses

³⁴ *Green v. State*, 2015 WL 4351049, at *3 (Del.).

³⁵ Affidavit of Defense Counsel in response to Defendant's Rule 61 Motion, at *3.

³⁶ *Green v. State*, 2015 WL 4351049, at *3 (Del.).

would be of no benefit to the defense. Rather than belabor a point that would not help the defense, counsel made the strategic decision not to do so.

41. The decision as to whether or not to call a witness and how to examine and/or cross-examine witnesses who are called are tactical decisions.³⁷ Great weight and deference are given to tactical decisions by the trial attorney. There is a strong presumption that defense counsel's conduct constituted sound trial strategy.³⁸ Defendant has failed to overcome this strong presumption.

42. Defense Counsel's decision not to cross examine the State witness and not to retain an expert constituted sound trial strategy. Defendant has failed to show how the cross-examination or expert testimony would have bolstered the defense in any way. Indeed, Defense Counsel stated that expert testimony would only have solidified the State's case and cross-examination would have been detrimental to Defendant.

43. Defendant has failed to establish that counsel's trial decisions were deficient in any respect or that Defendant suffered any prejudice as a result thereof.

Ineffective Assistance Claim Alleging Lack of Communication

44. Defendant claims that defense counsel was ineffective because he failed to communicate with Defendant to properly prepare for trial. Defendant contends that he was never showed the surveillance video and never informed about strategy.

45. On Defendant's direct appeal, the Delaware Supreme Court addressed the fact that Defendant had expressed dissatisfaction with his counsel based on the lack of opportunity to go over certain videos and their general lack of communication. The Delaware Supreme Court noted however that at the time of trial Defendant had informed

³⁷ *Outten v. State*, 720 A.2d 547, 557 (Del. 1998).

³⁸ *Strickland v. Washington*, 466 U.S. 668, 689 (1984); *Harrington v. Richter*, 131 S.Ct. 770 (2011).

the Superior Court that his concerns regarding the videos related to the charges that had been dismissed (the robbery charges), and that he had communicated with counsel and was fine with proceeding with his counsel after they had the opportunity to communicate.³⁹

46. Defendant's claims that he was dissatisfied with his counsel for not showing him the videos and for lack of communication is at odds with the record that he was no longer dissatisfied after having the opportunity to communicate with counsel prior to trial.⁴⁰

47. Defense counsel, in his Affidavit in response to Defendant's Rule 61 motion, represents that he had communicated with Defendant on numerous occasions prior to trial and discussed the case in detail. Defense counsel explained to Defendant that the evidence against him was very strong and that his only real defense was to argue "reasonable doubt."⁴¹

48. Defense counsel could not recall if he showed Defendant a copy of the video surveillance from the alleged robbery, but he did recall that the video was of very poor quality and of marginal, if any value.⁴² Moreover, in light of the fact that the robbery charges were dismissed prior to the trial, the video was of little relevance. Defendant recognized this at the time of trial when he acknowledged to the court that the videos related to charges that were already dropped.⁴³

49. Defendant has not established that his counsel was deficient, or that he was prejudiced as a result thereof. Defendant does not offer any example of how better

³⁹ *Green v. State*, 2015 WL 4351049, at *4 (Del.).

⁴⁰ *Id.*

⁴¹ Affidavit of Defense Counsel in response to Defendant's Rule 61 Motion, at *3.

⁴² Affidavit of Defense Counsel in response to Defendant's Rule 61 Motion, at *2.

⁴³ See, *Green v. State*, 2015 WL 4351049, at *3 (Del.).

communication would have bolstered his defense, or a different strategy would have been employed that would have caused the jury to reach a verdict it would not otherwise have reached.⁴⁴

50. Defendant has failed to make any concrete allegations of actual prejudice and substantiate them. Defendant has failed to meet his burden to establish that defense counsel's conduct was deficient in any regard nor has he established actual prejudice as a result of any alleged deficiency. Defendant's ineffective assistance of counsel claims, set forth in Ground One, are without merit.

Ground Two: Claim that Court Erred by Not Giving a *Lolly* Instruction

51. Defendant claims that the trial court erred in not giving the jury a *Lolly* instruction that the latent fingerprint lifted off of the firearm was put into an AFIS search but no match was found.

52. This claim is procedurally barred. Either it was raised and adjudicated in some fashion on Defendant's direct appeal and is barred by Rule 61(i)(4),⁴⁵ or it is barred by Rule 61(i)(3), for failing to raise this claim on direct appeal. Defendant was aware of, had time to, and the opportunity to raise this claim on direct appeal. He either did so and it is now procedurally barred as previously adjudicated or he failed to do so and it is now procedurally barred for failure to raise this claim on direct appeal.

53. In addition to being procedurally barred, this claim is also without merit. On direct appeal, Defendant contended that the State was required to inform the jury of the lack of fingerprint match in the AFIS. Apparently, when the fingerprint on the gun magazine was run through the AFIS no match was produced. However, a manual

⁴⁴ *Gattis*, 697 A.2d at 1186.

⁴⁵ *Green v. State*, 2015 WL 4351049, at *3-4 (Del.).

fingerprint comparison did, in fact, reveal that Defendant's fingerprint matched the fingerprint on the gun magazine.

54. Defendant's counsel was aware of the lack of the fingerprint match in AFIS but knew that depending on the orientation of the fingerprint in the database, AFIS might not produce a fingerprint match. Defendant's counsel was also aware that Defendant's fingerprint did match the fingerprint on the gun magazine in the manual fingerprint comparison. Defendant's counsel did not believe it would be helpful to raise the AFIS results with the jury.

55. Defendant claims that the court erred in not giving a *Lolly*⁴⁶ instruction as to the lack of the fingerprint match by AFIS. A *Lolly* instruction is considered when dealing with lost or unavailable evidence. If the State fails to preserve evidence material to a defendant's case, the defendant may be entitled to a jury instruction that the jury can infer that the missing evidence would have been exculpatory.⁴⁷

56. In this case, the evidence of the lack of the fingerprint match on the AFIS run was neither lost nor unavailable. The parties were both aware that fingerprint on the gun magazine run through AFIS did not produce a match. Defendant's counsel was aware of this negative match before trial.⁴⁸ Because the AFIS run did not involve lost or unavailable evidence, Defendant's claim that the court erred by not giving a *Lolly* instruction is without merit. No instruction was required or warranted.

⁴⁶ *Lolly v. State*, 611 A.2d 956, 959 (Del. 1992).

⁴⁷ *Lolly*, 611 A..2d at 959-61.

⁴⁸ *Green*, 2015 WL 4351049, at * 2-4.

57. Defense counsel further explained in his Affidavit in response to Defendant's Rule 61 motion, that based on the evidence in the case, he believed that a *Lolly* instruction was not warranted and therefore did not request one.⁴⁹

58. This claim is procedurally barred and is also without merit.

Ground Three- Claim that State Failed to Preserve Discoverable Evidence

59. Defendant claims that the State failed to preserve discoverable evidence by not preserving and producing the clothing he was wearing at the time of his arrest.

60. This claim is procedurally barred by Rule 61(i)(4) because it was already raised and adjudicated on Defendant's direct appeal.⁵⁰

61. The Delaware Supreme Court already held that Defendant has not shown that his clothing on the night of his arrest was material to his defense. The police officer testified that he saw Defendant, he followed Defendant, he observed Defendant throw an object under a Ford Explorer, he then handcuffed Defendant, and saw a gun under the Ford Explorer. In light of this testimony, the Delaware Supreme Court already held that Defendant's clothing at the time of his arrest was not material to his defense.⁵¹

62. In light of the fact that the officer who stopped Defendant never lost sight of him, saw him discard an object under a parked vehicle, heard the sound of the metallic "thud" when the object hit the ground, and identified Defendant in court as the person he stopped, the fact that the State did not preserve Defendant's clothes was not material to the case.⁵²

⁴⁹ Affidavit of Defense Counsel in response to Defendant's Rule 61 Motion, at *3.

⁵⁰ *Green v. State*, 2015 WL 4351049, at *4 (Del.).

⁵¹ *Green v. State*, 2015 WL 4351049, at *4 (Del.).

⁵² Affidavit of Defense Counsel in response to Defendant's Rule 61 Motion, at *3.

63. This claim is procedurally barred as previously adjudicated by the Delaware Supreme Court on direct appeal and is also without merit.

Ground Four- Claim that The Court Erred in Denying Motion for New Counsel

64. Defendant claims that the trial court erred in denying his motion for new counsel.

65. This claim is procedurally barred by Rule 61(i)(4) because it was already raised and adjudicated on Defendant's direct appeal.⁵³

66. The Delaware Supreme Court on Defendant's direct appeal noted that Defendant's dissatisfaction with his counsel was based on the lack of opportunity to go over certain videos and their general lack of communication. At the time of trial, Defendant informed the Superior Court that his concerns regarding the videos related to the charges that had been dismissed, and that he had communicated with counsel and was fine with him. The Delaware Supreme Court has already held that, under the circumstances of this case, the Superior Court did not err in denying Defendant's motion for the appointment of new counsel.⁵⁴

67. This claim is procedurally barred as previously adjudicated by the Delaware Supreme Court on direct appeal and is also without merit.

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied.

IT IS SO RECOMMENDED.

Commissioner Lynne M. Parker

oc: Prothonotary

⁵³ *Green v. State*, 2015 WL 4351049, at *4 (Del.).

⁵⁴ *Green v. State*, 2015 WL 4351049, at *4 (Del.).