

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,

Plaintiff,

v.

MICHAEL WASHINGTON,

Defendant.

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ID No. 0909018475A & B

Submitted: October 5, 2015*

Decided: October 21, 2016

Upon Defendant's Motion for New Trial or for Evidentiary Hearing,
DENIED.

ORDER

Karin M. Volker, Esquire, Deputy Attorney General, Department of Justice, 820
North French Street, Wilmington DE 19801, Attorney for the State.

Michael Washington, *pro se*, Smyrna, DE 19977.

WHARTON, J.

* Although this motion was filed with the Prothonotary on October 5, 2015, it only was referred to this Judge on October 17, 2017.

This 20th day of October, 2016, upon consideration of Defendant Michael Washington's ("Washington") *pro se* "Motion Requesting New Trial or Evidentiary Hearing for the State Withholding to Test Material Evidence Favorable to Defense" ("Motion"), and the record in this case, it appears to the Court that:

1. In November 2010, Defendant Michael Washington ("Washington") was convicted in a jury trial of two counts each of Manslaughter and Possession of a Firearm During the Commission of a Felony.¹ In February 2011, he was sentenced on those charges, plus an additional, severed weapon charge to a total of 86 years at Level V, suspended after 64 years for descending levels of probation.² His convictions were affirmed on direct appeal on October 14, 2011.³

2. On March 7, 2012, Washington initiated postconviction proceedings with the filing of his Motion for Postconviction Relief.⁴ The Motion was referred to a commissioner of this Court. The postconviction process was lengthy and a bit convoluted. It included the retirement of the originally assigned commissioner, the assignment of a new commissioner, and, at different times, various counsel being appointed to represent Washington, not all of whom met with his approval. Eventually, this Court denied Washington's Amended Motion for Postconviction

¹ *Washington v. State*, 2011 WL 4908250 (Del. October 14, 2011) at *1.

² *Id.*

³ *Id.*

⁴ D.I. 64.

Relief and Supplemental Claims upon Washington's appeal from the Findings of Fact and Recommendations of the Commissioner.⁵ In the midst of that postconviction process this Motion was filed. However, for reasons unknown to the Court, the Motion was never resolved. By this Order, the Court decides that Motion.

3. Washington's Motion alleges that newly discovered evidence exists in that the State did not submit certain items of physical evidence for DNA and fingerprint testing, the results of which would have been favorable to him.⁶ Washington also alleges that the State failed to "perform a ballistic test on what/where in the house the weapon was fired."⁷ For each of these alleged failures to test claims, Washington requests an evidentiary hearing.⁸ Washington himself has not actually produced any new evidence, but seems to think that a motion under Superior Court Criminal Rule 33 is an appropriate vehicle for developing such evidence.

4. Motions for new trials are controlled by Superior Court Criminal Rule 33. If the motion for a new trial is based on the ground of newly discovered evidence, it may be made "only before or within two years after final judgment."⁹ Motions based on any other grounds "shall be made within 7 days after verdict of

⁵ D.I. 149.

⁶ D.I. 130.

⁷ *Id.*


⁸ *Id.*

⁹ Super. Ct. Crim. R. 33.

finding of guilty or within such further time as the court may fix during the 7 day period.”¹⁰ Here, final judgment was more than two years before Washington filed this Motion.

THEREFORE, because the Motion is untimely, Defendant’s Motion for New Trial or for an Evidentiary Hearing is **DENIED**.

IT IS SO ORDERED.



Ferris W. Wharton, J.

cc: Prothonotary
cc: Investigative Services Office

¹⁰ *Id.*