

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
v.)	I.D. # 76000001DI
)	
)	
WALTER STOKES, JR.,)	
)	
Defendant.)	

Date Submitted: July 28, 2008
Date Decided: August 11, 2008

OPINION

Defendant's Pro Se Motion for Postconviction Relief
DENIED.

Walter Stokes, Jr., Delaware Correctional Center, 1181 Paddock Road,
Smyrna, Delaware 19977, Defendant, *pro se*.

Steven P. Wood, Esq., Dept. of Justice, 820 North French St., Sixth Floor,
Wilmington, DE 19801.

JURDEN, J.

I. INTRODUCTION

Defendant collaterally attacks his convictions for first degree murder and possession of a deadly weapon, claiming that the revised interpretation of *Del. C* § 636(a)(2) as set forth in *Williams v. State*¹ requires this Court to vacate his conviction. Because Defendant was convicted of intentional murder under *Del. C.* § 636(a)(1) rather than felony murder under *Del. C* § 636(a)(2), the *Williams* decision is inapplicable and Defendant's claims are **SUMMARILY DISMISSED.**

II. BACKGROUND

On March 31, 1977, a jury convicted Defendant Walter Stokes, Jr. (“Stokes”) of intentional first degree murder, first degree robbery, and two counts of possession of a deadly weapon during the commission of a felony.² He was sentenced to life plus an additional term of years in prison.³ On appeal, the Delaware Supreme Court reversed Stokes' first degree robbery and accompanying weapons charge ruling that there was insufficient evidence to support those convictions.⁴ On June 15, 1989, Stokes filed his first *pro se* motion for postconviction relief claiming ineffective assistance

¹ 818 A.2d 906 (Del. 2002).

² Jury Trial, Docket Item (“D.I.”) 10

³ Sentence, D.I. 18.

⁴ *Stokes v. State*, 402 A.2d 376 (Del. 1979).

of counsel and violations of his due process rights. This Court denied his postconviction motion on July 17, 1989 and the Supreme Court affirmed on March 13, 1990.⁵ On May 5, 2008, Stokes filed the current *pro se* postconviction motion.

III. DISCUSSION

Before addressing the merits of a postconviction relief claim, the Court must first determine whether the claims pass through the procedural filters of Rule 61(i).⁶ To protect the integrity of the procedural rules, the Court will not address the substantive aspects of the defendant's claims if they are procedurally barred.

Pursuant to Rule 61(i)(1), a postconviction motion that is filed more than three years after judgment of conviction is procedurally barred.⁷ Rule 61(i) provides:

(1) Time limitation. A motion for postconviction relief may not be filed more than three years 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 three years after the right is first recognized by the United States Supreme Court;

⁵ See *Stokes*, 1990 WL 38314 (Del.).

⁶ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991) (“The first inquiry in any analysis of a post-conviction relief claim is whether the petition meets the procedural requirements of Rule 61.”) See also *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁷ Stokes' claims are not subject to the amendment to Rule 61 that bars all claims filed more than *one year* after the judgment of conviction is final, as this amendment applies to cases in which the judgment of conviction became final after July 1, 2005. See Super. Ct. Crim. R. 61(i)(1).

- (2) Repetitive motion. Any ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim is warranted in the interest of justice;
- (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 a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice;
- (5) Bars inapplicable. The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

Stokes claims that his first degree murder conviction should be reversed under the Delaware Supreme Court's holding in *Williams v. State*.⁸ He further claims that he should have been convicted of second degree murder or manslaughter rather than first degree murder because he was intoxicated at the time of the killing. Because Stokes filed the current

⁸ 818 A.2d 906 (Del. 2002).

postconviction motion twenty nine years after his final conviction, his motion is procedurally barred under Rule 61(i)(1).⁹

In order to avoid procedural default, Stokes asserts a new retroactive right based on the Delaware Supreme Court's holding *Williams v. State*.¹⁰ In *Williams*, the Delaware Supreme Court revised the interpretation of the “in the course of” and “in furtherance of” language of 11 *Del. C.* § 636(a)(2) and held that a defendant may not be convicted of felony murder unless it has been established that the murder helped to move the underlying felony forward.¹¹ Under this revised interpretation, Stokes claims that the prosecution could not prove that the killing happened in furtherance of the commission or attempted commission of robbery in light of the fact that his conviction for robbery has been vacated by the Delaware Supreme Court. The decision in *Williams*, however, is inapplicable to Stokes’ conviction. Stokes was convicted of intentional first degree murder under 11 *Del. C.* § 636(a)(1), not felony murder under 11 *Del. C.* § 636(a)(2). Under 11 *Del. C.* § 636(a)(1), the prosecution need only show that Stokes intentionally caused the death of the victim. There is sufficient evidence to show that

⁹ Stokes’ conviction for first degree murder and the accompanying weapon charge became final on May 9, 1979. See *Stokes*, 402 A.2d 376 (Del. 1979).

¹⁰ 818 A.2d 906.

¹¹ The Court in *Williams* overruled *Chao v. State*, which held that in order “[f]or felony murder liability to attach, a killing need only accompany the commission of an underlying felony. Thus, if the ‘in furtherance’ language has any limiting effect, it is solely to require that the killing be done by the felon, him or himself.” 604 A.2d 1351 (Del. 1992).

Stokes intentionally caused the death of James W. Powell by shooting him in the head with a .22 caliber handgun. Because the retroactive right recognized in *Williams* is inapplicable to Stokes' intentional murder conviction, his claim is procedurally time barred.

Stokes' second claim, that he should have been convicted of second degree murder or manslaughter rather than first degree murder because he was intoxicated at the time of the killing, is also procedurally time barred under Rule 61(i)(1). This claim is also barred under Rules 61(i)(2) and Rule 61(i)(3) because Stokes failed to assert the claim in his prior postconviction motion or in the proceedings leading to final judgment. Furthermore, under Delaware law, voluntary intoxication is no defense to any criminal charge. Therefore, it is unnecessary for the Court to consider this claim under Rule 61(i)(5).

For the above mentioned reasons, Stokes' Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 is hereby **DENIED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge