



2. In this fourth postconviction motion, Lewis appears to raise five arguments. First, Lewis contends that his convictions were improper because the Grand Jury's indictment lacked the required oath and affirmation. As a result of this error, he contends that his counsel was ineffective, that the trial judge abused her discretion for permitting trial to go forward, and that a miscarriage of justice occurred. Second, because he claims he has already served more time than statutorily required, he argues that any further prosecution of him is illegal. Third, he submits that most of the orders from this Court lack a trial judge's signature, making his continued incarceration illegal. Fourth, he contends that his sentence is ambiguous because the sentencing order does not state which of his sentences – one to be served for one year at Level V, and one to be served at Level IV for one year – is to be suspended. Fifth, he claims that a trial judge who was not the original trial judge should have recused himself after a juror asked him a question that he was unable to answer regarding the element of “immediate presence” for his Carjacking in the Second Degree charge.

3. 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

(“Rule 61”).<sup>3</sup> If the procedural requirements of Rule 61 are not met, in order to protect the integrity of the procedural rules, the Court should not consider the merits of a postconviction claim.<sup>4</sup> In those cases, the Court may summarily dismiss the defendant’s claim “[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief[.]”<sup>5</sup>

4. Rule 61(i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;<sup>6</sup> (2) any basis for relief must have been asserted previously in any prior postconviction proceeding; (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 or cause for relief; and (4) any basis for relief must not have been formerly adjudicated in any proceeding. The bars to relief under (1), (2), and (3), however, do not apply “to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice

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<sup>3</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). See also *Bailey v. State*, 588 A.2d 1121, 1127 (Del. Super. Ct. 1991).

<sup>4</sup> *State v. Gattis*, 1995 WL 790961, at \*2 (Del. Super. Ct. Dec. 28, 1995) (citing *Younger*, 580 A.2d at 554), *aff’d*, 697 A.2d 1174 (Del. 1997), *cert. denied*, 522 U.S. 1124 (1998).

<sup>5</sup> Super. Ct. Crim. R. 61(d)(4).

<sup>6</sup> If the final order of conviction occurred before July 1, 2005, the motion must be filed within three years. If the final order of conviction occurred on or after July 1, 2005, however, the motion must be filed within one year. See Super. Ct. Crim. R. 61(i)(1) (July 1, 2005) (amending Super. Ct. Crim. R. 61(i)(1) (May 1, 1996)).

because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”<sup>7</sup> Moreover, the procedural bars of (2) and (4) may be overcome if “reconsideration of the claim is warranted in the interest of justice.”<sup>8</sup>

5. Lewis’s claims are all procedurally barred. First, Rule 61(i)(4) bars consideration of his claims because the Supreme Court has already found that Lewis is unable to overcome the time-bars for any of his claims.<sup>9</sup> Similarly, any claim of a violation of his right to due process was not raised in his previous postconviction motions, nor in his appeal to the Supreme Court, as required by Rule 61(i)(2).<sup>10</sup> Lewis’s current motion is also time-barred by Rule 61(i)(1) because he filed this motion on July 31, 2008, more than one year after his conviction became final.<sup>11</sup>

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<sup>7</sup> Super. Ct. Crim. R. 61(i)(5).

<sup>8</sup> *Id.* R. 61(i)(4).

<sup>9</sup> *Lewis v. State*, 2008 WL 2721607 (Del. Jul. 14, 2008) (ORDER).

<sup>10</sup> Lewis had numerous opportunities to raise these claims, as evidenced by the number of cases in which both this Court and Supreme Court have addressed his motions. *See, e.g., State v. Lewis*, 2006 WL 2560145, at \*4 (Del. Super. Ct. Aug. 29, 2006); *Lewis v. State*, 884 A.2d 512, 2005 WL 2414293, at \*4 (Del. Sept. 29, 2005) (TABLE); *Lewis v. State*, 940 A.2d 946, 2007 WL 3385910 (Del. Nov. 15, 2007) (TABLE).

<sup>11</sup> The Supreme Court issued its mandate affirming his convictions and sentences on September 29, 2005. *See* Docket 90.

6. This Court will also not consider the merits of his motion, despite the procedural bars, because nothing in Lewis's motion demonstrates a miscarriage of justice or warrants this Court's consideration in the interest of justice.<sup>12</sup> Lewis's claims of ineffective assistance of counsel and violation of his due process rights have already been found to be without merit.<sup>13</sup> While those claims were not based on counsel's failure to object to the indictment's lack of oath or affirmation or a lack of signatures on this Court's orders, Lewis could easily have included those claims in any of his three previous motions or in his direct appeal to the Supreme Court. Moreover, Lewis has provided no evidence that the indictment was faulty, that this Court failed to sign any of the orders it issued, or that any conversation with a judge other than the trial judge required his recusal.<sup>14</sup> Finally, regarding his claim that his sentence is ambiguous, not only has

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<sup>12</sup> Super. Ct. Crim. R. 61(i)(4). *See also State v. Lewis*, 2007 WL 1241873, at \*1-2 (Del. Super. Ct. Apr. 27, 2007) (finding no basis to overcome the procedural bars).

<sup>13</sup> *State v. Lewis*, 2007 WL 1241873, at \*2 (Del. Super. Ct. Apr. 27, 2007), *aff'd*, 940 A.2d 946, 2007 WL 3385910 (Del. Nov. 15, 2007) (Table).

<sup>14</sup> *See, e.g., State v. Jordan*, 1994 WL 637299, at \*3 (Del. Super. Ct. Jun. 23, 1994), *aff'd*, 648 A.2d 424, 1994 WL 466142 (Aug. 25, 1994) (Table) ("This Court need not address Postconviction Relief claims that are conclusory and unsubstantiated."); *State v. Brown*, 1998 WL 735880, at \*3 (Del. Super Ct. Aug. 20, 1998), *aff'd*, 734 A.2d 640, 1999 WL 591450 (Del. May 21, 1999) (Table) ("Conclusory claims raised in a defendant's motion for postconviction relief are insufficient to prove ineffective assistance of counsel and will not be addressed.").

Lewis failed to raise this claim in any of his previous motions, but the Supreme Court has also affirmed his sentence.<sup>15</sup>

7. Because Lewis's claims should have been raised in his previous motions and are time-barred, it plainly appears to this Court that Lewis is not entitled to relief. Accordingly, Lewis's motion for postconviction is **SUMMARILY DISMISSED.**

**IT IS SO ORDERED.**

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Peggy L. Ableman, J.

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<sup>15</sup> *Lewis v. State*, 884 A.2d 512, 2005 WL 2414293 (Del. Sept. 29, 2005) (Table).