

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

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|--------------------|---|-------------------|
| STATE OF DELAWARE |) | |
| |) | |
| |) | |
| |) | |
| v. |) | I.D. # 0707015257 |
| |) | |
| BRIAN K. PEARLMAN, |) | |
| |) | |
| Defendant. |) | |
| |) | |

Submitted: July 22, 2008
Decided: August 12, 2008

Upon Defendant's Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

Gregory C. Strong, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Brian K. Pearlman, Wilmington, Delaware, *pro se*.

PARKINS, J.

This 12th day of August 2008, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. On January 3, 2008, the Defendant pled guilty to Exploitation of an Infirm Adult and three counts of Theft. On March 14, 2008, the Court sentenced the Defendant to two years at Level V followed by decreasing levels of probation and ordered the Defendant to pay restitution. The Court then modified the restitution portion of the sentencing order on April 4, 2008.

2. On March 23, 2008, the Defendant filed his first motion for modification of sentence, which was denied on May 8, 2008. The Defendant then filed a second motion for modification of sentence on July 22, 2008, which was denied on August 7, 2008.

3. On July 22, 2008, Defendant filed his first motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”), which is now before the Court. Defendant’s first ground for relief alleges that the sentencing judge abused his discretion, and violated the Fourteenth and Sixteenth Amendments when he imposed the Defendant’s sentence.

Defendant’s second ground for relief asserts that the presentence investigation officer violated his “state and federal constitutional rights” by withholding mitigating circumstances from the Court.

4. The purpose of Rule 61 is to provide a procedure by which a defendant can “set aside a judgment of conviction or a sentence of death on

the ground that the court lacked jurisdiction or on any other ground that is a sufficient factual and legal basis for a collateral attack upon a criminal conviction or a capital sentence.”¹ Both of Defendant’s grounds for relief attack the sentence the Court imposed, not the underlying judgment of conviction. Therefore, the Court must summarily dismiss Defendant’s Rule 61 motion, as it is an inappropriate vehicle to obtain a modification of his sentence.²

5. For the reasons stated, Defendant’s Motion for Postconviction Relief is **SUMMARILY DISMISSED**.³

IT IS SO ORDERED.

Judge John A. Parkins, Jr.

oc: Prothonotary
pc: Investigative Services

¹ Superior Court Criminal Rule 61(a)(1).

² *State v. Berry*, 2007 WL 2822928 (Del. Super. Sept. 25, 2007) (summarily dismissing a motion for postconviction relief because it attacked the sentence imposed rather than the underlying judgment); *State v. Johnson*, 2007 WL 1989844 (Del. Super. July 5, 2007) (stating that a motion for postconviction relief is not the appropriate means to obtain a modification of sentence).

³ The Court also notes that even if it treated Defendant’s motion as a motion for modification of sentence, the motion would be denied as repetitive. *See* Super. Ct. Crim. R. 35(b) (“The Court will not consider repetitive requests for reduction of sentence.”).