

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

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 9607013263
	)	
ALDRICH HACKETT,	)	
	)	
Defendant.	)	

Submitted: May 1, 2008  
Decided: August 21, 2008

**On Defendant's *Pro Se* Motion for Postconviction Relief. DENIED.**

**ORDER**

James Apostolico, Esquire, Department of Justice, 820 North French Street,  
Wilmington, Delaware 19801.

Aldrich Hackett, Delaware Correctional Center, 1181 Paddock Road, Smyrna,  
Delaware, 19997. *Pro se.*

**CARPENTER, J.**

On this 21<sup>st</sup> day of August, 2008, upon consideration of Defendant's Motion for Postconviction Relief it appears to the Court that:

1. On May 1, 2008, Aldrich Hackett ("Defendant") filed a *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). For the reasons set forth below, Defendant's Motion for Postconviction Relief is **DENIED**.

2. The Defendant's arrest and subsequent conviction stem from a robbery and shooting on July 13, 1996, at the Great Wall Chinese Restaurant in Wilmington. The factual details of the incident are fully set out in the Court's previous opinion denying the Rule 61 petition of Hackett's co-defendant Kevin Hill.<sup>1</sup> After a jury trial Defendant was convicted of Murder First Degree (Felony Murder), Robbery First Degree, Conspiracy Second Degree and various weapons offenses.<sup>2</sup> Hackett was sentenced to life imprisonment on the Murder conviction, 20 years at Level V for the Robbery conviction, five years at Level V for each of the three weapons offenses, and two years at Level V suspended for two years at Level II for the Conspiracy Second conviction. The Supreme Court affirmed his convictions and a mandate was issued

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<sup>1</sup>See *State v. Hill*, 2008 WL 361227, \*1 (Del. Super. Jan. 31, 2008).

<sup>2</sup>Hackett was originally indicted on two counts of Murder First Degree, but the jury acquitted him of the Intentional Murder charge.

on August 5, 1999.<sup>3</sup> The Defendant subsequently filed the Postconviction Motion presently before the Court almost nine years after his conviction was affirmed.

3. Defendant raises two grounds for relief in his Motion. First, he claims his Sixth Amendment right to a fair trial was violated because the State “could not prove” the Defendant killed the victim Xiong Zheng. Such a conclusory assertion that the State failed to prove the elements of Murder First Degree does not warrant review in a postconviction motion that is filed outside of the statutory time limitation, and it is therefore summarily dismissed pursuant to Rule 61.<sup>4</sup>

4. Defendant next claims that his felony murder conviction should be vacated pursuant to the Supreme Court’s decision in *Williams v. State*.<sup>5</sup> In *Williams*, the Supreme Court held that the “in furtherance of” language of the Delaware felony murder statute requires a murder occur not only in the course of the felony, but also to “help move the felony forward.”<sup>6</sup> In *Chao v. State* the Supreme Court found the

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<sup>3</sup>*Hackett v. State*, 734 A.2d 641 (Del. 1999).

<sup>4</sup>*See* Super. Ct. Crim. R. 61(d)(4). “If 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, the judge may enter an order for its summary dismissal and cause the movant to be notified.” To avoid summary dismissal, a movant must do more than make conclusory allegations of law or fact. He or she must support the assertions with “concrete allegations of actual prejudice, or risk summary dismissal.” *State v. Childress*, 2000 WL 1610766, at \*1 (Del. Super. Sept. 19, 2000).

<sup>5</sup>818 A.2d 906 (Del. 2003).

<sup>6</sup>*Id.*, at 913. *See* 11 Del. C. §636(a)(2) “A person is guilty of murder in the first degree when...[i]n the course of and in furtherance of the commission or attempted commission of a felony..., the person recklessly causes the death of another person.”

holding in *Williams* applies retroactively.<sup>7</sup> While the Court would normally dismiss the Defendant's motion as time barred under Rule 61(I)(1)<sup>8</sup>, as it was filed by Defendant more almost nine years after his conviction became final, Rule 61(I)(5)<sup>9</sup> provides an exception to the procedural bars of Rule 61(I). Referred to as the "fundamental fairness" exception, Rule 61(I)(5) has been applied where the right relied upon was recognized for the first time after a direct appeal.<sup>10</sup> Therefore, pursuant to Rule 61(I)(5) it is appropriate for the Court to analyze the Defendant's claim under the Delaware Supreme Court's interpretation of the felony murder statute.

5. The question before the Court is whether there was sufficient evidence presented at trial to support a finding that the murder of Xiong Zheng was committed in order to "facilitate," or help move the robbery forward. This was the same question the Court addressed in its recent opinion denying co-defendant Kevin Hill's Rule 61

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<sup>7</sup>"We conclude that in the interest of justice, *Williams* must be applied retroactively, because Chao may have been convicted for acts that do not constitute felony murder." *Chao v. State*, 931 A.2d 1000, 1000 (Del. 2007).

<sup>8</sup>Rule 61(i)(1) acts as a time bar to any claim for relief not filed within one year of the defendant's conviction becoming final. For judgments of conviction that became final prior to July 1, 2005, a defendant has three years in which to file his postconviction motion. Thus, the latter rule applies to the Defendant's motion, as his conviction became final in 1999.

<sup>9</sup>"The [procedural] bars to relief. . . shall not apply 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." *See State v. Kirk*, 2004 WL 396407 (Del. Super.)

<sup>10</sup>*Younger v. State*, 580 A.2d 552, 555 (Del. 1990)(citing *Teague v. Lane*, 489 U.S. 288, 297-99 (1989)).

Motion. Defendant may have framed his argument as a *Williams/Chao* claim, but from what the Court can glean from Defendant's motion, the substance of his claim reads more like an "insufficiency of the evidence" argument where Defendant believes because he was not the "triggerman," he cannot be found guilty of felony murder.<sup>11</sup> Either way, Defendant's claim is without merit. In the *Hill* opinion, the Court distinguished the facts of *Williams* and *Chao* from the robbery that occurred at the Great Wall Chinese Restaurant involving Hill, Hackett, and their co-defendants:

The facts in *Williams*, *Chao*, and *Kirk* are distinguishable from Defendant's case. Had Defendant entered the Great Wall that night with the intent to kill Xiong Zheng, and then decided to take some cash from the register as an afterthought, he may have had a case for relief under *Williams*. On the contrary, not only was the murder of Xiong Zheng committed in the course of the robbery, but it was committed with the intent to help move the robbery forward. The testimony that the Defendant thought the victim was reaching for something, perhaps a weapon, supports the argument that Hill was eliminating an obstacle that stood in the way of he and his friends ultimately taking money out of the cash register. Furthermore, testimony that the Defendant "had to do it" suggests he intended to quell any resistance to their completion of the robbery.<sup>12</sup>

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<sup>11</sup>See Def. Motion at "Argument of Felony Murder."

<sup>12</sup>*Hill*, 2008 WL 361227 at \*3.

6. Through Defendant Hackett's participation as an accomplice to the robbery at the Great Wall, he was found by a jury to be culpable for the murder that occurred in the course of and in furtherance of that robbery. This is the essence of the felony murder statute. The fact that Hackett did not pull the trigger makes him no less responsible for causing the death of Xiong Zheng under the Supreme Court's interpretation of the felony murder statute.<sup>13</sup> In his own Motion the Defendant clearly lays out his involvement in the crime, noting that he "joined the criminal enterprise," and admitted to having a gun when he and his co-defendants entered the Great Wall with the intent to commit a robbery. In fact, the four co-defendants that testified against Hackett all stated that it was Hackett's idea to commit the armed robbery in the first place.<sup>14</sup> Defendant further asserts in his motion that when he, Hill, Grier and Cooper entered the restaurant, Hill and Defendant both had their guns pointed at the restaurant employees.<sup>15</sup> It was at that point that co-defendant Hill shot Xiong Zheng because "he was paranoid, he was scared and he thought [he] was reaching for something."<sup>16</sup> Two co-defendants testified that they "observed Hackett grab the

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<sup>13</sup>*See Torrence v. State*, 2005 WL 2923501, \*3 (Del. Nov. 2, 2005)(holding that co-defendant's testimony "constituted evidence that [defendant] was involved in the planning and commission of the robbery, that [defendant] knew that a gun was being used in furtherance thereof, and that whether directly *or as an accomplice*, [defendant] recklessly caused the death of the Travelodge clerk after forcing him to hand over the money at gunpoint.")(emphasis added).

<sup>14</sup>Def.'s Motion, "Statement of Facts" at 6.

<sup>15</sup>*Id.*

<sup>16</sup>Trial of Kevin Hill, Tr. Dec. 5, 1997, testimony of Khalil Ameer-Bey at 48.

owner Tom Tiong, point a gun at the back of Tiong's head, and demand that he open the cash register. When the cash register opened both Cooper and Hackett grabbed the money inside.”<sup>17</sup>

7. It is clear that the murder of Xiong Zheng occurred in the course of the robbery and was committed in order to remove any resistance to its successful completion. Therefore the evidence presented at trial of Defendant's complicity in the robbery continues to support his conviction for felony murder, and is not affected by the Supreme Court's interpretation of the “in furtherance of” language of 11 *Del. C.* §636(a)(2) as retroactively applied by the *Chao* decision. The Defendant has not therefore set forth a “colorable claim” required by Rule 61(I)(5), and the Defendant's motion is DENIED.

IT IS SO ORDERED.

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Judge William C. Carpenter, Jr.

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<sup>17</sup>Def.'s Motion, “Statement of Facts” at 6.