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

| STATE OF DELAWARE, |) | |
|--------------------|---|-------------------|
| V. |) | ID No. 0602013039 |
| JAMES R. RUNYON, |) | |
| Defendant. |) | |

Submitted: May 17, 2012 Decided: July 6, 2012

On Defendant's Objection to Commissioner's Report and Recommendation

ORDER

Ipek K. Medford, Esquire, Department of Justice, Wilmington, Delaware, Attorney for the State

James R. Runyon, pro se

JOHNSTON, J.

- 1. On September 7, 2006, Defendant pled guilty to one count of second degree assault and one count of attempted first degree robbery. As part of the plea agreement, Defendant acknowledged that he was eligible for sentencing as an habitual offender.
- 2. On November 17, 2006, Defendant was sentenced as an habitual offender to a total of 11 years at Level V, followed by decreasing levels of supervision. Defendant did not take a direct appeal to the Delaware Supreme Court.
- 3. On March 13, 2008, Defendant filed his first Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. On June 26, 2008, this Court, after a full and thorough consideration of the record and issues raised, denied Defendant's Motion. This Court concluded that Defendant had the capacity to enter his guilty plea and that his plea was entered into voluntarily, intelligently and knowingly.
- 4. On July 22, 2008, Defendant filed a Motion for Reconsideration for the denial of his Motion for Postconviction Relief. On August 29, 2008, this Court denied Defendant's Motion for Reconsideration.³
- 5. Defendant appealed this Court's denial of his Motion for Postconviction Relief to the Delaware Supreme Court. On appeal,

¹ State v. Runyon, 2008 WL 2690277 (Del. Super.).

² *Id.* at *4-6.

³ State v. Runyon, 2008 WL 4899414 (Del. Super.).

Defendant added a new claim that his sentencing as an habitual offender was unconstitutional and in breach of his plea agreement with the State.

- 6. The Delaware Supreme Court found Defendant's claims to be without merit and affirmed the Superior Court's denial of the Motion for Postconviction Relief. ⁴ The Supreme Court held that Defendant's plea agreement and the acknowledgement of habitual offender status were knowing and voluntary. ⁵ Further, the Court rejected Defendant's ineffective assistance of counsel claim based on alleged conflict of interest, and affirmed this Court's denial of Defendant's motion to stay the postconviction proceedings. ⁶
- 7. In November 2011, Defendant filed a Motion for Modification of Sentence. In this Motion, Defendant acknowledged and admitted that he was eligible for sentencing as a habitual offender. This Court denied Defendant's Motion for Modification of Sentence on December 9, 2011.
- 8. On March 20, 2012, Defendant filed his second Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61.
- 9. This Motion for Postconviction Relief was referred to a Superior Court Commissioner pursuant to 10 *Del. C.* §512(b) and Superior Court Criminal Rule 62 for proposed findings of fact and conclusions of law.

⁴ Runyon v. State, 968 A.2d 492 (Del. 2009).

⁵ Id.

⁶ Id

- The Commissioner issued the Report and Recommendation on 10. May 2, 2012 recommending that Defendant's *Pro Se* Motion for Postconviction Relief be denied.
- 11. Defendant filed an Objection to Commissioner's Report and Recommendation on May 17, 2012. Defendant admits that his claims are time-barred pursuant to Rule 61(i)(1) because the motion was filed more than one year after his conviction. However, Defendant argues that the Rule 61(i)(5) miscarriage of justice exception should apply. Defendant asserts that his plea agreement was involuntary because he was "under the influence of medicine" at the time he pled guilty, and his postconviction claims have not been previously litigated. Also, Defendant argues that he could not have raised the claims timely due to his counsel's ineffective assistance. Therefore, Defendant contends that the Commissioner's Report and Recommendation should not be accepted.

Defendant's motion is time-barred pursuant to Rule 61(i)(1), as 12. it was filed more than one year after his conviction. The Court finds that the Rule 61(i)(5) miscarriage of justice exception does not apply, as defendant has not established that he has been deprived of a substantial constitutional right.⁷

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⁷ See Younger v. State, 580 A.2d 552, 555 (Del. 1990).

- 13. Further, Defendant's motion is precluded by Rule 61(i)(4), because the claims he asserts have been formally adjudicated in Defendant's prior postconviction relief motion. The Delaware Supreme Court affirmed this Court's decision that Defendant's guilty plea was entered into knowingly, intelligently and voluntarily. The Delaware Supreme Court also held that Defendant's counsel did not provide ineffective assistance. Furthermore, the Delaware Supreme Court found that any challenges to the habitual offender proceedings and Defendant's sentence were contradicted by the record and by Defendant's knowing and voluntary guilty plea.
- 14. The Court finds that defendant's arguments lack merit.

 Additionally, Defendant's claims are procedurally barred by Rule 61(i)(1) and Rule 61(i)(4).

THEREFORE, Defendant's objection to the Commissioner's Report and Recommendation is hereby **DENIED**. The Court hereby accepts the Report and Recommendation in its entirety. Defendant's second Motion for Postconviction Relief is hereby **DENIED**.

IT IS SO ORDERED.

<u>/s/ Mary M. Johnston</u>
The Honorable Mary M. Johnston