## SUPERIOR COURT OF THE STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE 1 THE CIRCLE, SUITE 2 GEORGETOWN, DE 19947 (302) 856-5257

January 3, 2013

N440 - State Mail Julian Brown Sussex Correctional Institution P.O. Box 500 Georgetown, DE 19947

RE: State of Delaware v. Julian Brown

Def. ID No. 1008014550-R1, 1008019332-R1, and 1008021746-R1

Dear Mr. Brown:

On December 27, 2012, the Court received your Motion for Post-conviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). Upon review, it is procedurally barred and therefore denied.

## Claims

On June 10, 2011, you entered guilty pleas to Delivery of Cocaine, Forgery, and Possession of Marijuana. You were already on probation and had an extensive record. The plea was entered on a Track 1 calendar, wherein the pending violation of probation ("VOP") matters were also resolved with admissions. The VOP case encompassed your earlier convictions on two counts of Rape in the 3<sup>rd</sup> Degree and one count of Unlawful Sexual Intercourse in the 2<sup>nd</sup> Degree.

The plea agreement by the State and defense recommended you serve seven years at supervision level 5 on the delivery offense, followed by home confinement at supervision level 4, followed by probation at supervision level 3. Level 3 probation was recommended on the remaining new offenses, as well as two of the VOP offenses, with you being discharged as unimproved on the third VOP charge.

The Court found the recommendation to be reasonable and imposed the recommended sentence. Therefore, you have been serving the seven-year sentence beginning on June 10, 2011, with credit for 284 days, per the sentence order.

## **Grounds Alleged**

You list three grounds for relief, but all are encompassed in the following allegations. You reported to probation and were arrested on a Rule 9 warrant and you were never *Mirandized*. Your attorney allowed you to admit guilt after your illegal arrest with no Miranda rights. You complained to your attorney about not being *Mirandized* but your attorney advised you that not being *Mirandized* made no difference.

## Procedural Bars

Rule 61(i) requires that you file your motion within one year of the date your conviction was final. Since there was no appeal, your conviction date was June 10, 2011. You were aware of the grounds for your motion because you acknowledge complaining to your attorney about the failure to be *Mirandized* upon arrest. Your motion was filed on December 27, 2012, which is six months too late. Your motion is procedurally barred and therefore denied.

There is no relief pursuant to Rule 61(i)(5) because you have not alleged any constitutional violation undermining the fundamental legality, reliability, integrity, or fairness of your guilty plea.

The three new charges involved your alleged criminal conduct in June, July, and August of 2010. You do not allege that any custodial interrogation took place in which inculpatory statements were made as to either the June, July, or August 2010 criminal activity. *Miranda* is not applicable upon arrest. *Miranda* only comes into play if the police conduct a custodial interrogation. There is nothing in your motion or the record that you gave inculpatory statements while in custody. There is no basis under Rule 61(i)(5) to save or excuse your late filing.

Defendant's Rule 61 motion is denied.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

THG/jfg

cc: Prothonotary

Christopher Hutchison, Esquire, Department of Justice

James D. Nutter, Esquire

<sup>&</sup>lt;sup>1</sup>*Miranda v. Arizona*, 384 U.S. 436 (1966)