

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
 v.) ID No. 9707012190
)
FREDDY FLONNORY,)
)
 Defendant.)

Submitted: March 21, 2013
Decided: May 15, 2013

On Freddy Flonnory's Motion for Post Conviction Relief

DENIED

MEMORANDUM OPINION

Freddy Flonnory, *Pro Se*

JOHNSTON, J.

PROCEDURAL CONTEXT

In September 1997, Defendant Freddy Flonnory was indicted along with his co-defendant, Korey Twyman, on two counts of First Degree Intentional Murder, Attempted First Degree Murder, First Degree Conspiracy, and related weapons offenses. The Superior Court severed the defendants for trial. Flonnory was convicted by a jury on all charges. After a penalty hearing, the Court imposed the death penalty for each of the two murder convictions. On August 14, 2001, the Delaware Supreme Court reversed Flonnory's conviction and sentence.¹

On February 5, 2004, Flonnory was convicted of: (1) two counts First Degree Intentional Murder; (2) Attempted First Degree Murder; (3) First Degree Conspiracy; and (4) related weapons charges. Flonnory was sentenced to life in prison for both first degree murder convictions, life in prison for the attempted murder conviction, and 60 years for the remaining convictions.

On March 13, 2013, Flonnory filed a *pro se* motion for postconviction relief alleging violation of his Due Process rights, abuse of discretion by the Court, and ineffective assistance of counsel. Flonnory claims that: (i) the State's expert witness on firearms and ammunition failed to satisfy the requirement of Rule of Evidence 702; (ii) this failure should have rendered the expert's testimony

¹ *Flonnory v. State*, 778 A.2d 1044 (Del. 2001).

inadmissible; and (iii) by failing to conduct a proper Rule 702 analysis, the Court abused its discretion. Flonnory also claims counsel failed to: (i) investigate evidence presented at trial against Flonnory; (ii) present readily-available evidence directly supporting the defense theory; and (iii) present readily-available lay witnesses directly supporting the defense theory.

STANDARD OF REVIEW

In evaluating a post-conviction relief motion, the Court first must ascertain if any procedural bars of Superior Court Criminal Rule 61(i) apply.² If a procedural bar is found to exist, the Court should refrain from considering the merits of the individual claims.³ This Court will not address claims for post-conviction relief that are conclusory and unsubstantiated.⁴

Pursuant to Rule 61(a), a motion for post-conviction relief must be based on “a sufficient factual and legal basis.” According to Rule 61(i)(1), a post-conviction relief motion may not be filed more than a year after judgment of conviction is final or one year after a newly-discovered, retroactively-applicable right is recognized by the United States Supreme Court or the Delaware Supreme court.

² *See Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

³ *See id.*

⁴ *See id.* at 555.

Pursuant to Rule 61(b)(2): “[T]he motion shall specify all the grounds for relief which are available to movant..., and shall set forth in summary form the facts supporting each of the grounds thus specified.”

Any ground for relief not asserted in a prior post-conviction relief motion is thereafter barred unless consideration of the claim is necessary in the interest of justice.⁵ Grounds for relief not asserted in the proceedings leading to the judgment of conviction are thereafter barred, unless the movant demonstrates: (1) cause for the procedural default; and (2) prejudice from violation of movant’s rights.⁶ Any formerly-adjudicated ground for relief, whether in a proceeding leading to the judgment of conviction, in an appeal, or in a post-conviction proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.⁷

To prevail on a claim of ineffective assistance of counsel, a defendant must show: (1) that counsel’s errors were so grievous that counsel’s performance fell below an objective standard of reasonableness; and (2) actual prejudice, that is, that there is a reasonable degree of probability that but for counsel’s errors, the

⁵ Super. Ct. Crim. R. 61(i)(2).

⁶ Super. Ct. Crim. R. 61(i)(3).

⁷ Super. Ct. Crim. R. 61(i)(4).

outcome of the proceedings would have been different.⁸ In making a claim of ineffective assistance of counsel, a defendant must make and substantiate concrete allegations of actual prejudice or risk summary dismissal.⁹ Although the *Strickland* standard is a two-part test, the showing of prejudice is so central to this claim that “[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.”¹⁰ In other words, if the Court finds that there is no possibility of prejudice even if a defendant’s allegations regarding counsel’s representations were true, the claim may be dismissed on this basis alone.

ANALYSIS

Ground I. Flonnory alleges that his counsel failed to introduce independent ballistic evidence and lay witness testimony to refute the State’s case. Flonnory argues that his defense should have recognized that a “credibility contest” would be present at trial, and a weapon expert should have been called to testify in Flonnory’s defense.

⁸ *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Albury v. State*, 551 A.2d 53, 58 (Del. 1988).

⁹ *Younger*, 580 A.2d at 556; *Robinson v. State*, 62 A.2d 1184, 1185 (Del. 1989).

¹⁰ *Strickland*, 466 U.S. at 697.

The tactical decisions of counsel will not be questioned merely because they did not succeed at trial.¹¹ Delaware courts strongly favor the presumption that decisions made by trial counsel during trial were trial strategy.¹² Absent a showing of prejudice, the Court will not analyze strategic tactical decisions made by counsel.¹³

A motion for postconviction relief will be dismissed due to procedural bar if it is “filed more than one year” after the final judgment.¹⁴ Similarly, any ground for relief that was previously adjudicated “in a postconviction proceeding” is barred from any future proceeding.¹⁵

Ground I previously was adjudicated in the Court’s Memorandum Opinion denying Defendant Freddy L. Flonnory’s Motion for Postconviction Relief, dated February 14, 2008.¹⁶ The final judgment upon which the present motion for postconviction relief occurred in February 2004, or nine years prior to the present

¹¹ *State v. Ducote*, 2006 WL 3872845, at *1 (Del. Super.).

¹² *Id.* at *2.

¹³ *State v. Guinn*, 2006 WL 1454811, at *2 (Del. Super.).

¹⁴ Super. Ct. Crim. R. 61(i)(1).

¹⁵ Super. Ct. Crim. R. 61(i)(4).

¹⁶ *State v. Flonnory*, 2008 WL 495780 (Del. Super.).

motion for postconviction relief.¹⁷ The present action therefore is barred under Superior Court Criminal Rule 61(i)(1) and 61(i)(4).

Ground II. Flonnory alleges that the State failed to meet the requirements of Rule of Evidence 702 in presenting ballistic evidence, and therefore it was abuse of discretion by the Court to allow this evidence into trial. Flonnory argues that this improper evidence was the only link between Flonnory and the weapon, and that but for this error, Flonnory likely would have been found not guilty.

Any ground for relief that was not raised by the Defendant in a prior postconviction proceeding “is thereafter barred”¹⁸ Flonnory never asserted this ground for relief prior to this present action. Therefore, this claim is procedurally barred pursuant to Superior Court Criminal Rule 61(i)(2).

¹⁷ See *State v. Flonnory*, 2004 WL 1658496 (Del. Super.).

¹⁸ Super. Ct. Crim. R. 61(i)(2).

CONCLUSION

Flonnory has failed to demonstrate that any of his Rule 61 claims survive procedural bars. **THEREFORE**, Flonnory's Motion for Postconviction Relief is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Mary M. Johnston

The Honorable Mary M. Johnston