IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

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| STATE OF DELAWARE, | : | |
| | : | I.D. No. 0411008300 |
| v. | : | |
| | : | |
| AMBROSE L. SYKES, | : | |
| | : | |
| Defendant. | : | |

Submitted: April 24, 2013
Decided: July 12, 2013

**ORDER**

Upon Defendant's Motion to Amend
Motion for Post-Conviction Relief.
*Denied.*

John Williams, Esquire of State of Delaware, Department of Justice, Dover, Delaware; attorney for the State.

Patrick J. Collins, Esquire of Collins & Roop, Wilmington, Delaware; attorney for the Defendant.

WITHAM, R.J.

## *I. Issue*

Whether the Court should grant Petitioner leave to amend, for a second time, his Motion for Post-Conviction Relief in order to add two additional claims?

## *II. Factual Background*

Petitioner, Ambrose L. Sykes ("Petitioner" or "Sykes") was convicted of two counts of Murder in the First Degree, two counts of Rape in the First Degree, and various other felony and misdemeanor offenses. Sykes was sentenced to death by lethal injection. On October 27, 2008, Sykes filed an initial Motion for Post-Conviction relief. Sykes subsequently amended that motion on October 19, 2009. Petitioner has now requested leave to amend his Rule 61 Petition for a second time to add two additional claims. After carefully considering the arguments and supporting authorities presented by counsel, I find that the proposed amendments are futile, and, thus, hereby deny Petitioner's Motion to Amend Motion for Post-Conviction Relief.

## *III. Parties' Contentions*

Sykes' second motion to amend seeks to assert two additional claims. The first relies upon an empirical study published in the *Iowa Law Review* in 2012 to allege that Sykes' death sentence violates the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, sections Seven and Eleven of the Delaware Constitution, because it was the product of systemic racial discrimination in the administration of Delaware's capital sentencing system. The second claim asserted in Sykes' second motion to amend relies upon a once pending State Senate Bill that would abolish the death penalty in Delaware to argue that Sykes' sentence offends

the Eighth Amendment by defying "evolving standards of decency." Sykes contends that Superior Court Criminal Rule 61(b)(6) expressly authorizes this Court to grant leave to amend postconviction motions at any time "when justice so requires," and that the interests of justice requires the proposed amendment because these new claims arise from recent developments in evolving areas of law and empirical analysis.

The State contends that Rule 61(i)(1), not 61(b)(6), sets forth the time requirements for the amendment of postconviction motions. The State argues that Sykes' second motion to amend does not comport with the time limitations of Rule 61(i)(1) because it was filed more than three years after his conviction became final. The State further argues that the present motion does not fall within the sole exception to the time requirements set forth in Rule 61(i)(1) because it does not assert a "retroactively applicable right that is newly recognized after the judgment of conviction is final.[1] The State asks this Court to deny the present motion to amend as untimely.

## *IV. Discussion*

### *A. The Claims Asserted in Sykes' Second Motion to Amend Are Not Time-Barred.*

The State argues the two new claims asserted in Sykes' second motion to amend are time-barred because he seeks to amend his initial postconviction relief motion after the three-year time period set forth in Rule 61(i)(1) expired. The

[1] Super. Ct. Crim. R. 61(i)(1).

Delaware Supreme Court recently rejected an identical argument in *Ploof v. State*.[2] Clarifying the time requirements for amendments to postconviction relief filings, the Supreme Court held that the time limit found within Rule 61(i)(1) applies only to the initial filing, and that Rule 61(b)(6) "grants Superior Court judges discretion to permit defendants to amend their motions when justice so requires."[3] Because Sykes filed his initial motion for postconviction relief within one year of his conviction, his original motion is timely. Accordingly, the new claims asserted in Sykes' present motion are not time barred by Rule 61(i)(1).

***B. Sykes' Second Motion to Amend is Denied Because the Proposed Claims Asserted Therein Are Futile.***

The clear result of the *Ploof* decision is that this Court shall freely give defendants leave to amend their motions for postconviction relief "when justice so requires."[4] This phrase is not self-defining. Furthermore, a review of the case law applying Rule 61(b)(6) provides this Court with little guidance in its efforts to determine the permissible bounds of this discretion in the postconviction context.[5] The Court thus finds it useful to examine the case law interpreting Superior Court

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[2] 2013 WL 2422870 (Del. Supr. June 4, 2013).

[3] *Id.* at *6.

[4] *Id.*

[5] *Compare, e.g., State v. Lindsey,* 2008 WL 4868763, at *2 (Del. Super. Oct. 23, 2008) (permitting petitioner to amend as a matter of right because the State had not yet filed a response in the matter) and *State v. Ploof,* 2012 WL 1413483, at *3 (Del. Super. Jan. 30, 2012) (granting leave to amend without explanation).

Civil Rule 15(a), which governs the amendments of pleadings in civil cases and contains virtually identical language. Rule 15(a) provides that motions for leave to amend "shall be freely given when justice so requires."[6] Decisions concerning motions to amend are entrusted to the sound discretion of the trial court.[7] Courts will generally not test the sufficiency of the pleadings in ruling on a motion to amend.[8] A motion to amend may be denied, however, if the amendment would be futile, in the sense that the legal insufficiency of the proposed amendment is obvious on its face.[9] A proposed amendment is futile if it would not withstand a motion to dismiss or if it fails to state a claim upon which relief may be granted.[10] Assuming the same criteria apply in the postconviction context, Sykes must be denied leave to amend his initial postconviction motion because the two new claims he seeks to assert are futile.

***1. Claim XXIII***

Petitioner's first proposed amendment, Claim XXIII, asserts that his death sentence was an unconstitutional product of systemic racial discrimination. Petitioner

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[6] Super. Ct. Civ. R. 15(a).

[7] *Mullen v. Alarmguard of Delmarva, Inc.,* 625 A.2d 258, 263 (Del. 1993).

[8] *Wilson v. Wilson*, 2005 WL 147942, at *2 (Del. Super. Jan. 14, 2005).

[9] *E.I. du Pont de Nemours & Co. v. Allstate Ins. Co.,* 2008 WL 555919, at *1 (Del. Super. Feb. 29, 2008).

[10] *Id.*

relies upon a statistical study published in the *Iowa Law Review*[11] (hereinafter "the Johnson study") which reveals larger racial disparities in Delaware's death sentencing rates when compared to the rates of other jurisdictions.[12] This study does not establish that the administration of Delaware's capital punishment system violates the Fourteenth Amendment's Equal Protection Clause. To prevail under that Clause, petitioner must prove that the decisionmakers in *his* case acted with discriminatory purpose. Petitioner has offered no evidence specific to his case that would support an inference that racial considerations played a part in his sentence, and the Johnson study alone is insufficient to support an inference that any of the decisionmakers in his case acted with a discriminatory purpose.

Likewise, Petitioner's argument that the Johnson study demonstrates that the Delaware death sentencing system violates the Eighth Amendment prohibition of cruel and unusual punishment is also futile. There is no merit that the Johnson study shows that Delaware's capital punishment system is arbitrary and capricious in application. The statistics do not prove that race enters into any capital sentencing decisions or that race was a factor in petitioner's case. This argument is not unlike the one rejected by the United States Supreme Court in *McCleskey v. Kemp*.[13] In *McCleskey*, the petitioner, a black man, had been convicted of two counts of armed

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[11] Sheri Lynn Johnson et al., *The Delaware Death Penalty: An Empirical Study*, 97 Iowa L. Rev. 1925 (2012).

[12] *Id.* at

[13] 481 U.S. 279, 107 S.Ct. 1756, 95 L. Ed. 2d 262 (1987).

robbery and one count of murder in Georgia, and thereafter sentenced to death.[14] In support of his claim, the petitioner offered a statistical study (the Baldus study) that demonstrated that Georgia defendants whose victims were white were 4.3 times more likely to receive a death sentence as those whose victims were black.[15] In rejecting petitioner's habeas corpus action, the Supreme Court held that the Baldus study did not demonstrate that the Georgia capital punishment system operates in an arbitrary or capricious manner, or that the petitioner's own sentence was unconstitutionally disproportionate.[16] The same reasoning applies here. The Constitution does not require Delaware to "eliminate any demonstrable disparity that correlates with a potentially irrelevant factor in order to operate a criminal justice system that includes capital punishment."[17] Thus, the amendment of Sykes' postconviction motion to include this claim would be futile because the Johnson study alone does not establish that Sykes' death sentence was the product of systemic racial discrimination in violation of the Delaware and United States constitutions.

***2. Claim XXXIV***

Petitioner's second proposed amended claim, Claim XXXIV, alleges that his death sentence should be vacated because it was the product of a sentencing process

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[14] *Id.* at 283-85, 107 S.Ct. at 1762-63.

[15] *Id.* at 292-93, 107 S.Ct. at 1766-67.

[16] *Id.* at 305-12, 107 S.Ct. at 1774-78.

[17] *Id.* at 391, 107 S.Ct. at 1781.

that offends the "evolving standards of decency that mark the progress of a maturing society"[18] in violation of the Eighth Amendment of the United States Constitution. This claim is predicated upon a bill introduced in the State Senate that would abolish capital punishment in Delaware.

The pending abolition legislation, Senate Bill 19, which Petitioner has relied upon in his argument, has now been tabled by the House Judiciary Committee.[19] This Court is not poised with comporting to the alleged "evolving standards of decency that mark the progress of a maturing society." It is the Legislators' job to create laws, and it is the Court's responsibility to interpret and enforce those laws. With the amendment to Senate Bill 19, there is no foreseeable legislation that would apply to the retroactive abolition of the death penalty. As there is no pending legislation which may retroactively modify the sentences to death row inmates, the Court is not poised to assume the role of the legislature. Doing such would break the principles long recognized by this Court. As there is no pending legislation for the retroactive repeal of death sentences, and this Court is not a legislative body, the Court must deny Claim XXIV as futile.

## *V. Conclusion*

Since it is within the Court's discretion to deny leave to amend a

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[18] *Roper v. Simmons*, 543 U.S. 551, 561, 125 S.Ct. 1183, 1190, 161 L. Ed. 2d 1 (2005).

[19] *See* Synopsis, S.B. 19, 147th Gen. Assemb., Reg. Sess. (Del. 2013). In its original form, Senate Bill 19 contained a retroactive provision that would have modified the sentences of all death row inmates to life in prison without parole or another reduced sentence. *Id.* The bill was later amended to allow for prospective application only. *Id.*

postconviction motion where to do so would be futile, Petitioner's Motion to Amend Motion for Postconviction Relief is hereby **DENIED.**

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh