## IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR KENT COUNTY

STATE OF DELAWARE	)
	) RK11-04-0159-01
V	) Assault 1 <sup>st</sup> (F)
	) RK11-04-0160-01
WILLIAM H. HICKS,	) Robbery $1^{st}$ (F)
(ID. No. 1103013083)	) RK11-04-0161-01
	) PFDCF (F)
Defendant.	)

Submitted: November 6, 2013 Decided: November 13, 2013

Dennis Kelleher, Esq., Deputy Attorney General, Department of Justice, for the State of Delaware.

William H. Hicks, Pro se.

Upon Consideration of Defendant's Motion For Postconviction Relief Pursuant to Superior Court Criminal Rule 61 **DENIED** 

YOUNG, Judge

## ORDER

Upon consideration of the Defendant's Motion For Postconviction Relief, the Commissioner's Report and Recommendation and the record in this case, it appears that:

- 1. The Defendant, William H. Hicks ("Hicks"), pled guilty on May 22, 2012 to one count of Assault in the First Degree, 11 *Del. C.* § 613; one count of Robbery in the First Degree, 11 *Del. C.* § 832(A); and one count of Possession of a Firearm During the Commission of a Felony, 11 *Del. C.* § 1447. In exchange for Hicks' plea, the State entered a *nolle prosequis* on the remaining charges of one count of Possession of a Deadly Weapon by a Person Prohibited and one count of Conspiracy in the First Degree. Both parties agreed to a presentence office investigation, and the State agreed to cap its recommendation at twelve years incarceration. Hicks faced a minimum mandatory sentence of eight years and a maximum of seventy-five years. The Court sentenced Hicks on July 11, 2012 to a total of fifty-three years incarceration suspended after serving fifteen years for probation. At the sentencing, the State recommended a sentence of twelve years incarceration as required by the Plea Agreement.
- 2. The Defendant did not appeal his conviction or sentence to the Delaware Supreme Court; instead he filed, *pro se*, the pending Motion For Postconviction Relief pursuant to Superior Court Criminal Rule 61. In his motion the defendant raises the following grounds for relief:: 1) unfulfilled Plea Agreement recommendation; 2) ineffective assistance of counsel; 3) merging the Robbery and PFDCF charges; and 4) lesser included offense should have been Attempted Robbery,

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not Robbery.

3. The Court referred this motion to Superior Court Commissioner Andrea M.

Freud pursuant to 10 Del. C. §512(b) and Superior Court Criminal Rule 62 for

proposed findings of facts and conclusions of law.

4. The Commissioner has filed a Report and Recommendation concluding that

the Motion For Postconviction Relief should be denied, because it is procedurally

barred and completely meritless.

**NOW, THEREFORE,** after *de novo* review of the record in this action, and

for reasons stated in the Commissioner's Report and Recommendation dated August

15, 2013,

IT IS ORDERED that the Commissioner's Report and Recommendation is

adopted by the Court, and the Defendant's Motion for Postconviction Relief is

DENIED.

/s/ Robert B. Young

J.

RBY/lmc

oc: Prothonotary

cc: The Honorable Andrea M. Freud

Dennis Kelleher, Esq.

Alexander Funk, Esq.

William Hicks, JTVCC

File

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