

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

STATE OF DELAWARE)
)
 v. _____) RK08-09-0644-02 through
) RK08-09-0652-02
 ERIC C. COOPER,) RK08-10-0351-02 through
(ID. No. 0808019339)) RK08-10-0363-02
)
)
 Defendant.)

Submitted: December 4, 2013
Decided: December 6, 2013

Kathleen A. Dickerson, Esq., Deputy Attorney General, Department of Justice, for
the State of Delaware.

Eric C. Cooper, *Pro se*.

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

YOUNG, Judge

ORDER

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

1. The defendant, Eric Cooper ("Cooper"), was found guilty, following a jury trial on June 30, 2009 of one count of Assault in the First Degree, 11 *Del. C.* § 613, as a lesser included offense of Attempted Murder in First Degree; ten counts of Possession of a Firearm during the Commission of a Felony, 11 *Del. C.* § 1447A; five counts of Attempted Robbery in the First Degree, 11 *Del. C.* § 832; one count of Burglary in the First Degree, 11 *Del. C.* § 826; three counts of Reckless Endangering in the First Degree, 11 *Del. C.* § 604; one count of Wearing a Disguise During the Commission of a Felony, 11 *Del. C.* § 1239; and one count of Conspiracy in the Second Degree, 11 *Del. C.* § 512. On August 27, 2009, Cooper was sentenced to a total of seventy six years incarceration, suspended after forty-nine years for probation, all forty-nine years of which were minimum mandatory time.

2. Cooper, through counsel, appealed his conviction to the Delaware Supreme Court. On April 12, 2010, the Supreme Court affirmed Cooper's conviction and sentence.¹

3. Cooper then filed, *pro se*, a Motion for Postconviction Relief on July 29, 2010, in which he raised five grounds for relief including several claims of ineffective assistance of counsel, a claim of prosecutorial misconduct, a claim that the jury *voir*

¹ *Cooper v. State*, 2010 WL 1451486 (Del.).

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dire questions were flawed and a claim that several of the charges for which he was convicted overlapped. This Court denied his motion as procedurally barred and meritless on October 24, 2011.²

4. On February 13, 2013, Cooper filed, *pro se*, a pending Second Motion for Postconviction Relief pursuant to Superior Court Rule 61. In his motion the defendant raises the following grounds for relief: 1) lack of jurisdiction to tri (sic) & conviction based upon misinterpreted law; and 2) suppression of favorable evidence.

5. 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.

6. The Commissioner has filed a Report and Recommendation concluding that the Second Motion For Postconviction Relief should be ***dismissed***, because it is procedurally barred by Rule 61(i)(2), (3) and (4) as time barred, not raised in his initial motion, for failure to prove cause and prejudice and as previously adjudicated.

7. No objections to the Report have been filed.

NOW, THEREFORE, after *de novo* review of the record in this action, and for reasons stated in the Commissioner's Report and Recommendation dated October 31, 2013,

IT IS ORDERED that the Commissioner's Report and Recommendation is adopted by the Court, and the Defendant's Second Motion for Postconviction Relief

² *State v. Cooper*, Del. Super., ID No. 0808019339, Young, J. (Oct.24, 2011) (ORDER).

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is **DISMISSED**.

/s/ Robert B. Young

J.

RBV/lmc

oc: Prothonotary

cc: The Honorable Andrea M. Freud

Kathleen A. Dickerson, Esq.

Eric C. Cooper, *Pro Se*

File