

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

| | | |
|---------------------|---|-----------------|
| STATE OF DELAWARE, |) | |
| |) | |
| v. |) | ID#: 0406005054 |
| |) | |
| MELVIN L. WILLIAMS, |) | |
| |) | |
| Defendant. |) | |

ORDER

**Upon Defendant's Second Motion for Postconviction Relief –
*SUMMARILY DISMISSED,***

**Upon Defendant's Motion for Appointment of Counsel –
*DENIED.***

1. In April 2007, Defendant's conviction for first degree murder and weapons offenses was affirmed.

2. Significantly, new counsel filed a timely motion for postconviction relief under Superior Court Criminal Rule 61 on March 25, 2008. After calling-for and reviewing, among other things, trial counsel's *Horne v. State* affidavit,¹ the court denied postconviction relief on May 28, 2009.² The order denying postconviction relief was affirmed December 2, 2009.³

¹ *Horne v. State*, 887 A.2d 973, 975 (Del.2005).

² *State v. Williams*, 2009 WL 6529205 (Del. Super. 2009) *aff'd*, 985 A.2d 391 (Del. 2009).

³ *Williams v. State*, 985 A.2d 391 (Del. 2009).

3. On January 15, 2014, Defendant, *pro se*, filed this, his second motion for postconviction relief. He simultaneously filed a motion for appointment of counsel. The Rule 61 motion was properly referred.⁴

4. The motion for postconviction relief rests on three grounds, each of which Defendant characterizes as a “Miscarriage Of Justice.” Defendant also invokes the federal Constitution. The first and third grounds for relief concern lack of evidence. The other one alleges prosecutorial misconduct. All three grounds have been previously adjudicated, for the most part. To the limited extent that Defendant frames them differently from before, they are procedurally barred. In other words, Defendant has already litigated these claims or he should have litigated them in the earlier proceedings. And, as to the latter, he offers neither an excuse for having failed to raise those claims sooner, nor prejudice.⁵

5. The court acknowledges, as it has before,⁶ the State’s case was highly circumstantial. Nevertheless, the court has also explained how there was ample evidence from which the jury could have found, as it did, Defendant guilty beyond a reasonable doubt.⁷

⁴ Super. Ct. Crim. R. 61(d)(1).

⁵ Super. Ct. Crim. R. 61(i)(3).

⁶ *Williams*, 2009 WL 6529205 at *1.

⁷ *Id.*

6. After reconsidering the matter, even with Defendant's characterizing his claims as miscarriages of justice with constitutional overtones, the court remains satisfied that Defendant has not sufficiently alleged either a miscarriage of justice or a colorable, constitutional claim requiring further review. Thus, the motion for postconviction relief is subject to summary dismissal.⁸

7. As to Defendant's motion for appointment of counsel, presumably, that is grounded in *Martinez v. Ryan*⁹ and the recent amendment to Superior Court Criminal Rule 61.¹⁰ Neither *Martinez* nor the amendment to Rule 61 applies to Defendant's situation, considering how long ago Defendant's first motion for postconviction relief was denied. More importantly, even if it were not for the timing, as mentioned above, Defendant was represented by independent counsel during his first motion for postconviction relief. That conclusively knocks-out any *Martinez* or Rule 61 right to counsel.

⁸ Super. Ct. Crim. R. 61(i)(5).

⁹ *Martinez v. Ryan*, 132 S. Ct. 1309, 1311 (2012).

¹⁰ Super. Ct. Crim. R. 61(e)(1).

For the foregoing reasons, Defendant's second motion for postconviction relief is **SUMMARILY DISMISSED** and Defendant's motion for appointment of counsel is **DENIED**. The Prothonotary shall notify Defendant.

IT IS SO ORDERED.

Date: February 4, 2014

/s/ Fred S. Silverman

Judge

cc: Prothonotary (Criminal)
Kevin M. Carroll, Deputy Attorney General
Melvin L. Williams, Defendant