IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE	)	
	)	RK09-07-1201-01
v.	)	RK09-07-1202-01
	)	RK09-07-1203-01
WILLIAM E. MORRISON,	)	
(ID. No. 0907024289)	)	
	)	
Defendant.	)	

Submitted: September 5, 2012
Decided: January 17 2013

R. David Favata, Esq., Department of Justice, Dover, Delaware, for the State of Delaware.

William E. Morrison, *Pro se.*

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

YOUNG, Judge

State v. William E. Morrison
ID. No. 0907024289
January 17, 2013

O R D E R

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 E. Morrison ("Morrison"), was found guilty by a jury on April 6, 2010 to one count of Burglary in the Second Degree, 11 *Del. C*. § 825; one count of Unlawful Imprisonment in the Second Degree, 11 *Del. C*. § 781; and one count of Offensive Touching, 11 *Del. C*. § 601. Prior to trial Morrison requested that he be allowed to proceed *pro se* and the Court granted his request with standby counsel. Following the verdict, the State filed a motion to declare Morrison a Habitual Offender pursuant to 11 *Del. C*. § 4214(a). The motion was granted on June 17, 2010 and the Defendant was sentenced to a total of eight years incarceration at Level V followed by one year probation.

2. The Defendant filed an appeal, *pro se*, with the Delaware Supreme Court in which he raised three grounds for relief: 1) The witness's testimony was different from her statement to police; 2) The prosecutor failed to ask the witness if her testimony was truthful; and 3) The police failed to investigate the case properly and preserve exculpatory evidence.

3. The Court found Morrison's appeal meritless and affirmed his conviction and sentence.

4. Defendant then 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) Movant was forced to go to trial without counsel;

2) Movant's Court appointed counsel was ineffective; and 3) Movant was forced to represent himself at trial without waiving his right to counsel.

4. 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.

5. The Commissioner has filed a Report and Recommendation concluding that the Motion For Postconviction Relief should be dismissed, because it is procedurally barred and fails to prove cause and prejudice.

6. 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 September 19, 2012,

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

/s/ Robert B. Young
J.

RBY/lmc
oc: Prothonotary
cc: The Honorable Andrea M. Freud
R. David Favata, Esq.
William T. Deely, Esq.
William E. Morrison, SCI
File

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE	)	
	)	RK09-07-1201-01
v.	)	Burglary 2nd (F)
	)	RK09-07-1202-01
WILLIAM E. MORRISON	)	Unlaw. Impr. 2nd (M)
	)	RK09-07-1203-01
Defendant.	)	Off. Touching (M)
ID. No. 0907024289	)	

COMMISSIONER'S REPORT AND RECOMMENDATION

Upon Defendant's Motion for Postconviction Relief Pursuant to Superior Court Criminal Rule 61

R. David Favata, Esq., Deputy Attorney General, Department of Justice, for the State of Delaware.

William E. Morrison, *Pro se*.

FREUD, Commissioner
September 19, 2012

The defendant, William E. Morrison, ("Morrison"), was found guilty by a jury on April 6, 2010 of one count of Burglary in the Second Degree, 11 *Del. C.* § 825; one count of Unlawful Imprisonment in the Second Degree, 11 *Del. C.* § 781 and one count of Offensive Touching, 11 *Del. C.* § 601. Prior to trial Morrison

requested that he be allowed to proceed *pro se*. The Court granted his request. Morrison represented himself *pro se* at trial with standby counsel. Following the verdict, the State filed a motion to declare Morrison a Habitual Offender pursuant to 11 *Del. C.* § 4214(a). The motion was granted on June 17, 2010 and Morrison was sentenced to a total of eight years incarceration at Level V followed by one year probation. Morrison filed an appeal, *pro se*, with the Delaware Supreme Court in which he raised three grounds for relief, characterized by the court as follows:

> He claims that he was denied a fair trial because a) the complaining witness's testimony was different from her statement to police; b) the prosecutor failed to ask the complaining witness if her testimony was truthful; and c) the police failed to investigate the case properly and preserve exculpatory evidence. Because Morrison raised no objections at trial with respect to any of his three claims, our standard of review is plain error.[1]

The Court found Morrison's appeal meritless and affirmed his conviction and sentence.[2]

FACTS

The following are the facts as noted by the Supreme Court in its opinion:

> (3) The evidence presented at trial was as follows. On July 24, 2009, Tiffany Taylor walked from her newly-rented apartment in West Dover, Delaware, to the Dover Public Library on South State Street. After picking up some books and movies for her two young daughters, she encountered Morrison while walking back to her apartment. Morrison asked Taylor for change for a $20

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[1] *Morrison v. State*, 2011 WL 1565844 at *1 (Del. Supr.) (footnote omitted).

[2] *Id.* at *3.

bill, but she told him she had no money. After Morrison made a personal remark that Taylor considered offensive, she curtailed her conversation with him, Morrison continued to walk with Taylor until she reached her apartment complex.

(4) Once at the complex, Morrison asked Taylor to use her bathroom. Taylor told him that the apartment clubhouse had a bathroom. Morrison then asked Taylor if he could have a glass of wine. Taylor said no, but gave him a choice of water or sweet tea. Morrison said he would have water. Taylor told him to wait outside and she would bring the water to him. Taylor went into her apartment and closed the door behind her. She did not lock it, however. After pouring the water into a glass, Taylor turned around and saw Morrison standing in her dining room. Startled, Taylor put the glass down and started to walk out of the kitchen.

(5) As Taylor reached the dining room, Morrison suddenly grabbed her and carried her into the living room. He told Taylor that he had a gun. Taylor screamed in the hope that one of her neighbors would hear her. Taylor testified that, when Morrison grabbed her, 'it scared [her] to death.' After Taylor began screaming, Morrison released her and left the apartment. Taylor watched as Morrison left the apartment complex. Taylor later picked up her daughters at daycare. She took them for ice cream at a nearby shopping center. While there, she contacted the Dover Police Department about the incident with Morrison.

(6) Late in the afternoon of July 24, 2009, Officer Derrick Mast arrived at Taylor's apartment to conduct an investigation. Officer mast noted that Taylor was trembling and her hands were shaking as she spoke about

> the incident. Taylor described Morrison to Officer Mast and told him that Morrison had identified himself as 'Will.' She described in particular, some distinctive scarring on Morrison's face. Officer Mast recognized the description and name because, by chance, he had had contact with Morrison earlier that morning. The next day, Officer Mast showed Taylor a photo array he had compiled, which included a photo of Morrison. Taylor immediately identified Morrison as the individual who had entered her apartment the preceding day.
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> (7) On July 26, 2009, Officer Mast arrested Morrison and took him to the police station for an interview. During the interview, Morrison told Officer Mast that Taylor had invited him into her apartment for a drink. Morrison also stated that, when Taylor pushed him away as he tried to give her a hug, he left the apartment. As such, he stated, he 'only trespassed,' but 'did not commit any burglary.' Morrison claimed to have used Taylor's bathroom, but, when asked to describe the bathroom, was unable to do so. At trial, Taylor testified that her bathroom has a highly distinctive decor—her bathtub is bright yellow and the room has a'rubber ducky' theme.[3]

MORRISON'S CONTENTIONS

Next, Morrison filed the instant Motion for Postconviction Relief pursuant to Superior Court Rule 61. In his motion, he raises the following grounds for relief:

> Ground One: Ineffective Assistance of Counsel Caused by the Court.
> Movant was forced to go to trial without counsel. Movant petitioned the court for new counsel when assigned counsel was being ineffective, and the court forced movant to proceed without any form of

[3] *Id*. at *1-2.

competency hearing.

Ground Two: Ineffective Assistance of Counsel. Movant's court appointed counsel was ineffective and fell below the legal standards for representation. Client/counsel relationship was beyond repair.

Ground Three: Ineffective Assistance of Counsel Caused by Court Post-Trial. Movant was forced to represent himself at trial without waiving his right to counsel. Even if right was waived, movant was entitiled to counsel in filing direct [Ap (illegible)].

DISCUSSION

Under Delaware law the Court must first determine whether Morrison has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of the postconviction relief claims.[4] Under Rule 61, post-conviction claims for relief must be brought within one year of the conviction becoming final.[5] Morrison's motion was filed in a timely fashion, thus the bar of Rule 61(i)(1) does not apply to the motion. As this is Morrison's initial motion for postconviction relief, the bar of Rule 61(i)(2), which prevents consideration of any claim not previously asserted in a postconviction motion, does not apply either.

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[4] *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) (*citing Harris v. Reed,* 489 U.S. 255 (1989)). *See Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

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

Grounds for relief not asserted in the proceedings leading to judgment of conviction are thereafter barred unless the movant demonstrates: (1) cause for the procedural fault, and (2) prejudice from a violation of the movant's rights.[6] The bars to relief are inapplicable to a jurisdictional challenge, colorable claim, or miscarriage of justice stemming from a constitutional violation that "undermine[s] the fundamental legality, reliability, integrity, or fairness of the proceeding leading to the judgment of conviction."[7]

To the extent Morrison's claims have not previously been adjudicated. they this fall under the bar of Rule 61(i)(3). Morrison is barred by Rule 61(i)(3) from raising them absent a clear demonstration of cause for his neglect and prejudice. In this case, Morrison represented himself at trial and on appeal and thus does not have the standard argument made in most postconviction motions: the claim that his attorney was ineffective. Morrison attempts to overcome this by making a tortured argument that he was forced to represent himself.

I have reviewed the transcript from the hearing held to determine if Morrison would be permitted to represent himself at trial. The Court had a detailed colloquy with Morrison to ascertain if he was fully aware of the dangers of representing himself.[8] During the colloquy Morrison stated that he had a disagreement with his counsel because counsel failed to file motions which Morrison wanted to be filed. Counsel explained to the Court that he did not feel that ethically he could file the motions Morrison requested in good faith. The Court explained to Morrison that

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[6] Super. Ct. Crim. R. 61(i)(3).

[7] Super. Ct. Crim. R. 61(i)(5).

[8] *Morrison,* Jan. 19, 2010, pp. 2 - 17 (Transcript).

he had two choices: one, to proceed to trial with his counsel or two, to proceed *pro se*. The Court made it clear to Morrison that new counsel would not be assigned Morrison's case because Morrison had failed to demonstrate to the Court that his counsel had a conflict of interest. The only problem was a difference in how counsel and Morrison wished the case strategy to proceed. While Morrison on several occasions attempted to argue, as he does in the pending motion, that he was being "forced" to represent himself and that he had "no choice." The Court made it clear to Morrison that he did have a choice and that he was not being forced to represent himself.[9] After the lengthy colloquy Morrison chose to represent himself. He is now attempting to avoid the consequences of that choice by once again arguing he was "forced" to do so in order to avoid the procedural bars of Rule 61. His argument is unavailing. I find, as did the trial judge that Morrison knowingly chose to represent himself and has no one to blame at this time but himself.

Even assuming arguendo that somehow the Court could conclude that his counsel was ineffective Morrison would still have to engage in the two part analysis enunciated in *Strickland v. Washington*[10] and adopted by the Delaware Supreme Court in *Albury v. State*.[11] The *Strickland* test requires the movant show that counsel's errors were so grievous that his performance fell below an objective standard of reasonableness.[12] Second, under *Strickland* the movant must show there is a reasonable degree of probability that but for counsel's unprofessional error the

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[9] *Id*. at p. 11.

[10] 466 U.S. 668, 687-88 (1984).

[11] 551 A.2d 53, 58 (Del. 1988).

[12] 466 U.S. at 687-88; *see Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

outcome of the proceedings would have been different, that is, actual prejudice.[13] In setting forth a claim of ineffective assistance of counsel, a defendant must make and substantiate concrete allegations of actual prejudice or risk summary dismissal.[14]

Generally, a claim for ineffective assistance of counsel fails unless both prongs of the test have been established.[15] However, the showing of prejudice is so central to this claim that the *Strickland* court stated "[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."[16] In other words, if the Court finds that there is no possibility of prejudice even if a defendant's allegations regarding counsel's representation were true, the Court may dispose of the claim on this basis alone.[17] Furthermore, the defendant must rebut a "strong presumption" that trial counsel's representation fell within the "wide range of reasonable professional assistance," and this Court must eliminate from its consideration the "distorting

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[13] 466 U.S. at 694; *accord* Dawson, 673 A.2d at 1190; Zebroski v. State, 822 A.2d 1038, 1043 (Del. 2003); *Ayers v. State*, 802 A.2d 278, 281 (Del. 2002); *Outten v. State,* 720 A.2d 547, 552 (Del. 1998) *(citing Wright v. State*, 671 A.2d 1353, 1356 (Del 1996)); *see Steckel v. State*, 795 A.2d 651, 652 (Del. 2002); *Johnson v. State*, 813 A.2d 161, 167 (Del. 2001); *Bialach v. State*, 773 A.2d 383, 387 (Del. 2001); *Skinner v. State,* 607 A.2d 1170, 1172 (Del. 1992); *Flamer v. State*, 585 A.2d 736, 753-754 (Del. 1990).

[14] *See Righter v. State,* 704 A.2d 262, 264-65 (Del.1997), (quoting Dawson v. State, 673 A.2d 1186, 1196 (Del. 1996); *see Wells v. Petsock*, 941 F.2d 253, 259-60 (3d Cir. 1991); *Outten v. State*, 720 A.2d 547, 552 (Del. 1998); *Somerville v. State,* 703 A.2d 629, 632 (Del. 1997); *Skinner v. State,* 1994 WL 91138, at *2 (Del. Supr.); *Brawley v. State*, 1992 WL 353838, at *2 (Del. Supr.); *Younger v. State*, 580 A.2d 552, 556 (Del. 1990); *Robinson v. State,* 562 A.2d 1184, 1185 (Del. 1989).

[15] *Strickland,* 466 U.S. at 687.

[16] *Id*. at 697.

[17] *State v. Gattis*, 1995 Del. Super. LEXIS 399, at *13.

effects of hindsight" when viewing that representation.[18]

As noted in the case at bar, Morrison attempts to show cause for his procedural default by making merely conclusory assertions of ineffectiveness of counsel. In regards to prejudice, Morrison simply makes vague and unsubstantiated claims of prejudice. Under the circumstances of the case, Morrison's allegations are meritless. The Supreme Court found no error in the trial. The record indicates that Morrison's trial attorney did in fact adequately prepare for the trial and was prepared to represent Morrison at trial had Morrison not chosen voluntarily to proceed *pro se*.[19] I also find counsel's affidavit more credible than Morrison's vague allegations. Morrison has utterly failed to demonstrate prejudice as a result of his counsel's alleged failures. This failure is fatal to Morrison's motion. His motion is therefore procedurally barred.[20] Furthermore, Morrison's claims are completely meritless.

To the extent that Morrison is rearguing his claim made during the colloquy to proceed *pro se* that he was "forced" to represent himself, his claim is barred by Rule 61(i)(4) as previously adjudicated. Rule 61(i)(4) bars "...any ground for relief that was formerly adjudicated ... unless reconsideration of the claim is warranted in the interest of justice."[21] Morrison has made no attempt to argue why reconsideration of this claim is warranted in the interest of justice. The interest of justice exception of Rule 61(i)(4) has been narrowly defined to require that the movant show that the

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[18] *Strickland*, 466 U.S. at 689; *Dawson,* 673 A.2d at 1190; *Wright v. State,* 671 A.2d 1353, 1356 (Del. 1996).

[19] See Affidavit of Counsel for a complete overview of Counsel's preparation for trial.

[20] *Dawson*, at 1190; *Wright v. State*, 1992 WL 53416, at *1 (Del. Supr.); *Brawley v. State,* 1992 WL 353838, at *1 (Del. Supr.).

[21] Super. Ct. Crim. R. 61(i)(4).

"subsequent legal developments have revealed that the trial court lacked the authority to convict or punish" him.[22] Morrison has made no attempt to demonstrate why his claim should be revisited. This Court is not required to reconsider Morrison's claim simply because it is "refined or restated."[23] For this reason, the claim for relief should be dismissed as previously adjudicated under Rule 61(i)(4).

Since Morrison's claims in his motion could have been raised at trial, it is abundantly clear that he was aware of them when he filed his direct appeal. Nevertheless, he failed to raise any of them. He has made no attempt whatsoever to establish even the remotest cause for his failure to do so, nor has he demonstrated any prejudice arising out of the alleged violation. As such, these claims should be dismissed as procedurally barred by Rule 61(i)(3). Morrison makes no attempt to argue that his claims rise to the level of a miscarriage of justice that undermines the fundamental legality of the conviction. Morrison's attempt to justify his claims at this late date by making broad accusations fails. A careful reading of Morrison's arguments, the State's well-reasoned reply and the transcript of this case, reveal that Morrison's arguments are meritless and based on supposition, conjecture, and innuendo. Morrison has failed to overcome in any way the bars of Rule 61. As such, his motion should be dismissed.

CONCLUSION

After reviewing the record in this case, it is clear that Morrison has failed to avoid the procedural bars of Rule 61(i). Consequently, I recommend that

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[22] *Maxion v. Stat*e, 686 A.2d 148, 150 (Del. 1996) (quoting *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990)).

[23] *Riley v. State*, 585 A.2d 719, 721 (Del. 1990).

Morrison's postconviction motion be ***dismissed*** as procedurally barred by Rule 61(i)(3) for failure to prove cause and prejudice and Rule 61(i)(4) as previously adjudicated.

/s/ Andrea Maybee Freud
Commissioner

AMF/dsc
oc: Prothonotary
cc: Hon. Robert B. Young
R. David Favata, Esq.
William T. Deely, Esq.
William E. Morrison, SCI
File