

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

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID No. 0808016406
)	
VICTOR GRANTHAM,)	
)	
Defendant.)	
)	

Submitted: September 24, 2014
Decided: October 10, 2014

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE SUMMARILY DISMISSED.**

James J. Kriner, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Victor Grantham, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se*.

PARKER, Commissioner

This 10th day of October 2014, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND AND PROCEDURAL HISTORY

1. On February 19, 2009, Defendant Victor Grantham pled guilty to the charge of Murder in the Second Degree. As part of the plea agreement, the State agreed to dismiss six additional felony charges in connection with the shooting death of Annibel Ramirez.

2. Following a pre-sentencing investigation, on May 1, 2009, Defendant was sentenced to 50 years incarceration at Level V, suspended after 30 years, followed by 10 years of Level III probation.

3. On direct appeal, on May 10, 2010, the Delaware Supreme Court affirmed Defendant's conviction and sentence.¹ On May 26, 2010, the Delaware Supreme Court issued its mandate to the Superior Court directing the affirmance of Defendant's conviction and sentence.² Thus, Defendant's judgment of conviction became final in May 2010.

4. Defendant filed a motion for modification of sentence. By Order dated September 17, 2009, the Superior Court denied the motion on the basis that the sentence was appropriate for all the reasons stated at the time of sentencing.³

5. On August 24, 2011, Defendant filed a petition to the Superior Court for a writ of habeas corpus. In his petition, Defendant claimed that: a) his guilty plea was coerced; b) he was "actually innocent" of the murder charge; c) there was insufficient evidence to support a charge of second degree murder; and d) he received ineffective assistance of

¹ *Grantham v. State*, 2010 WL 2163912 (Del. 2010).

² Superior Court Docket No. 44.

³ Superior Court Docent No. 32.

counsel in connection with his guilty plea.⁴ By Order dated September 20, 2011, the Superior Court denied Defendant's petition for a writ of habeas corpus.⁵ In the Order denying Defendant's petition the Superior Court expressly stated that "[t]he issues in defendant's petition are more properly raised in Rule 61 proceedings, if not procedurally barred."⁶

6. Defendant appealed the denial of his petition for a writ of habeas corpus to the Delaware Supreme Court. By Order dated February 6, 2012, the Delaware Supreme Court affirmed the denial of Defendant's petition for a writ of habeas corpus.⁷ The Delaware Supreme Court held that Defendant's claims relating to his guilty plea and his counsel's performance were not cognizable in a petition for a writ of habeas corpus. The Delaware Supreme Court, like the Superior Court, also instructed Defendant that he "must pursue any such claims in accordance with the procedures outlined in Superior Court Criminal Rule 61."⁸

DEFENDANT'S RULE 61 MOTION

7. On August 20, 2014, Defendant filed the subject motion for postconviction relief.⁹ In the subject motion, Defendant re-raises the same four claims he raised in his petition for a writ of habeas corpus.

8. Prior to addressing the substantive merits of any claim for postconviction relief, the Court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61.¹⁰ If a procedural bar exists, then the claim is barred,

⁴ See, Superior Court Docket No. 49; *Grantham v. State*, 2012 WL 385613, *1 (Del.).

⁵ Superior Court Docket No. 50.

⁶ Superior Court Docket No. 50.

⁷ *Grantham v. State*, 2012 WL 385613 (Del.).

⁸ *Grantham v. State*, 2012 WL 385613, at *1 ftnt. 5 (Del.).

⁹ Superior Court Docket No. 53.

¹⁰ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

and the Court should not consider the merits of the postconviction claim.¹¹ Moreover, if it plainly appears from the motion for postconviction relief that the movant is not entitled to relief, the Court may enter an order for its summary dismissal and cause the movant to be notified.¹²

9. Rule 61 (i) imposes the procedural imperative that the motion must be filed within one year of a final order of conviction.¹³ This bar to relief does not apply to a claim that the court lacked jurisdiction or to a claim that there was new evidence or a new rule of constitutional law, made retroactive to cases on collateral review, that would render the conviction invalid.¹⁴

10. The claims that Defendant raises in the subject motion are time-barred, waived, and without merit.

11. In this case, Defendant's claims are time-barred. Rule 61(i)(1) applies because Defendant filed this motion more than one year after his final order of conviction. Defendant raises nothing new or recently discovered. Indeed, all of the alleged facts which Defendant contends gives rise to his claims were known to him at the time of his plea in February 2009, and at his sentencing in May 2009. Defendant's final order of conviction was in May 2010, and this motion filed in August 2014, was filed over 4 years later, clearly outside the applicable one year limit. Defendant's claims, at this late date, are time-barred.

12. In fact, in September 2011, the Superior Court instructed Defendant that a Rule 61 motion would need to be filed in order to raise the claims he was seeking to raise in

¹¹ *Id.*

¹² Super.Ct.Crim.R. 61(d)(4).

¹³ Since the final order of conviction occurred after July 1, 2005, the motion must be filed within one year. See, Super.Ct.Crim.R. 61(i)(1)(July 1, 2005).

¹⁴ Super.Ct.Crim.R. 61(i)(5).

his petition for a writ of habeas corpus. Those same claims are now being sought to be raised by Defendant in the subject Rule 61 motion. Yet, despite the Superior Court's instructions in September 2011, Defendant did not file his Rule 61 motion until August 2014, almost three years later.

13. In February 2012, the Delaware Supreme Court also instructed Defendant that he was required to file a Rule 61 motion in order to properly present the claims he was seeking to raise in his petition for a writ of habeas corpus. Yet, Defendant waited over 2 ½ years after the Delaware Supreme Court's advices, to file the subject Rule 61 motion. Defendant's Rule 61 motion, at this late date, is time-barred.

14. Defendant's claims in the subject Rule 61 motion appear to stem from alleged shortcomings and deficiencies during the pretrial stage, plea stage and during sentencing. If Defendant genuinely believed he had a meritorious claim, he was required to raise it on direct appeal or in a timely filed Rule 61 motion. Defendant had time and opportunity to raise any issue he so desired in a timely filed postconviction motion. There is no just reason for Defendant's lengthy delay in doing so.

15. Since Defendant's claims are time-barred, Defendant must meet an exception to overcome the bar to relief. In this case, it is undisputed that the Superior Court had jurisdiction over the felony offenses for which Defendant was charged.¹⁵ Moreover, Defendant does not raise anything new or recently discovered in his motion. Indeed, Defendant raises the same issues he raised in his petition for a writ of habeas corpus filed in August 2011, about 3 years ago. Defendant does not raise any issue that was not known to him during his plea (February 2009), sentencing (May 2009) and direct appeal

¹⁵ *Grantham v. State*, 2012 WL 385613, at *1 (Del.).

(May 2010). Thus, there was no just reason for Defendant's failure to raise the issues presented in the subject motion in a timely filed Rule 61 motion. There is no exception that is applicable here to warrant the court to consider Defendant's time-barred motion.¹⁶

16. In addition to being time-barred, Defendant's motion is without merit. Defendant's present contention that his plea was coerced and uninformed is belied by the representations Defendant, himself, made to the court at the time he accepted the plea. A defendant is bound by his answers on the plea form and by his testimony at the plea colloquy in the absence of clear and convincing evidence to the contrary.¹⁷

17. In this case, the Truth-in-Sentencing Form and plea colloquy reveal that Defendant knowingly, voluntarily and intelligently entered a guilty plea to the charge for which he was sentenced. During the plea colloquy, Defendant represented that he had reviewed and discussed the plea agreement and the Truth-In-Sentencing Guilty Plea Form with his counsel.¹⁸

18. In the Truth-in-Sentencing Guilty Plea Form, Defendant represented that he understood that by pleading guilty he was waiving his constitutional rights: to have a trial; to be presumed innocent until the State proves each and every part of the charges against him beyond a reasonable doubt; to a trial by jury; to cross-examine witnesses against him; to present evidence in his defense; to testify or not testify; and to appeal, if convicted.¹⁹ Defendant represented that all his answers in the Truth-in-Sentencing Guilty

¹⁶ Super.Ct.Crim.R. 61(i)(5).

¹⁷ *State v. Harden*, 1998 WL 735879, *5 (Del. Super.); *State v. Stuart*, 2008 WL 4868658, *3 (Del. Super. 2008).

¹⁸ February 19, 2009 Plea Transcript, at pg. 4.

¹⁹ Truth-in-Sentencing Guilty Plea Form dated February 19, 2009.

Plea Form were truthful and that he read and understood all the information on the form.²⁰

19. Defendant also represented that he was satisfied with his counsel's representation of him.²¹ Defendant represented that he understand he was facing a minimum/mandatory sentence of 15 years and a maximum sentence of up to life in prison.²²

20. During the plea colloquy, Defendant represented that nobody promised him what his sentence would be and nobody offered him anything in exchange for his plea.²³ Defendant also acknowledged his guilt.²⁴ Only after finding that Defendant's plea was entered into knowingly, intelligently and voluntarily, did the court accept the plea.²⁵

21. Defendant has not presented any clear, contrary evidence to call into question his prior testimony at the plea colloquy or answers on the Truth-In Sentencing Guilty Plea Form. Defendant's claim that his plea was coerced or uninformed is without merit.

22. Moreover, since Defendant's plea was entered into voluntarily, intelligently and knowingly, Defendant waived his right to challenge any alleged errors or defects occurring prior to the entry of his plea, even those of constitutional proportions.²⁶ The claims that Defendant seeks to raise in the subject Rule 61 motion: 1) that the plea was coerced and uninformed; 2) that he was "actually innocent" of the murder charge, 3) that there was insufficient evidence to support a charge of second degree murder, and 4) that his counsel was ineffective with the handling of his plea, were waived when Defendant voluntarily entered his plea. Indeed, Defendant's present contentions stem from

²⁰ Truth-in-Sentencing Guilty Plea Form dated February 19, 2009.

²¹ February 19, 2009 Plea Transcript, at pg. 5.

²² February 19, 2009 Plea Transcript, at pg. 5.

²³ February 19, 2009 Plea Transcript, at pg. 5.

²⁴ February 19, 2009 Plea Transcript, at pg. 6.

²⁵ February 19, 2009 Plea Transcript, at pg. 6.

²⁶ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Modjica v. State*, 2009 WL 2426675 (Del. 2009); *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2004).

allegations of defects, errors, misconduct and deficiencies which occurred prior to the entry of the plea, and were waived when Defendant knowingly, voluntarily and intelligently entered his plea.

23. Defendant understood that by accepting the plea offer he was waiving his right to a trial by jury, waiving his right to contest the sufficiency of the evidence, waiving his right to cross-examine witnesses, present a defense, and to appeal any conviction.²⁷ Defendant could have elected to go to trial and put the State to its proofs. Defendant chose instead to plead guilty to the charge of Murder in the Second Degree, in return for the State dismissing six additional felony charges. As discussed above, Defendant's guilty plea was knowingly, voluntarily and intelligently entered. Defendant cannot now seek to contest the sufficiency of the evidence or the alleged shortcomings of his counsel during the pre-trial and plea process. Defendant's claims were waived when he knowingly, voluntarily and intelligently accepted the plea offer.

24. Defendant's request for the appointment of counsel and appointment of a private investigator are denied.²⁸ Having carefully considered the Defendant's motion and the evidentiary record, it does not appear that the appointment of a private investigator will aid in the resolution of this motion.

25. As to the appointment of counsel, Defendant is not entitled to the appointment of counsel in this untimely and procedurally barred motion. In *Martinez v. Ryan*,²⁹ the United States Supreme Court held that inadequate assistance of counsel during the initial state postconviction proceedings may establish cause for a defendant's procedural default of a claim of ineffective assistance of counsel at trial in pursuing federal habeas corpus

²⁷ February 19, 2009 Plea Transcript; Truth-in-Sentencing Guilty Plea Form dated February 19, 2009.

²⁸ Superior Court Docket No. 54.

²⁹ *Martinez v. Ryan*, 132 S.Ct. 1309 (2012).

relief.³⁰ *Martinez* did not hold that there is a federal constitutional right to counsel in state postconviction proceedings.³¹

26. Although *Martinez* does not apply to state court proceedings, Delaware Superior Court Criminal Rule 61 was amended to provide that, effective May 6, 2013 and onward, the court will appoint counsel for an indigent movant's first *timely* filed postconviction proceeding.³² The rule was adopted May 6, 2013 and is not retroactive.³³ Under the circumstances of this case, Defendant's request for the appointment of counsel in this untimely filed and otherwise barred motion is denied. Defendant has failed to overcome the procedural hurdles warranting the appointment of counsel.³⁴

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied.

IT IS SO RECOMMENDED.

Commissioner Lynne M. Parker

oc: Prothonotary
Kester I.H. Crosse, Esquire

³⁰ See, *Roten v. State*, 2013 WL 5808236, at *1 (Del.).

³¹ *Martinez*, 132 S.Ct. at 1315; *Roten*, 2013 WL 5808236, at *1.

³² Super.Ct.Crim.R. 61(e).

³³ *Roten v. State*, 2013 WL 5808236, at *1 (Del.).

³⁴ Super.Ct.Crim.R. 61(e); *Roten v. State*, 2013 WL 5808236, at *1-2 (Del.); *Marvel v. State*, 2013 WL 4542708, at *1 (Del. 2013).