SUPERIOR COURT OF THE STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2 GEORGETOWN, DE 19947

February 1, 2013

Alfred J. Snead SBI # 00 Sussex Correctional Institution P.O. Box 500 Georgetown, DE 19947

RE: State of Delaware v. Alfred J. Snead Def. ID No. 1008025077

Dear Mr. Snead:

This is my decision on your Motion for Postconviction Relief. You were convicted of Driving Under the Influence of Alcohol on June 27, 2011. This was your fifth DUI conviction. I sentenced you to five years at supervision Level V, suspended upon the completion of the Greentree Program for two years of probation and another treatment program. You filed an appeal of your conviction with the Supreme Court. On March 15, 2012, the Supreme Court dismissed your appeal because you did not file an opening brief and appendix. On May 21, 2012, you filed your first Motion for Postconviction Relief. In it you allege that your constitutional rights were violated because (1) you were never arrested at the scene of the crime, (2) the arresting officer did not have probable cause to arrest you, (3) you were not given you *Miranda* warnings, (4) you were never read the Implied Consent form, and (5) you were not provided with the surveillance tapes from Delaware State Police Troops 4 and 7, and the background data for the chemical test. At different times

<sup>&</sup>lt;sup>1</sup> Snead v. State, 2012 WL 892316 (Del. 2012).

throughout your case you were represented by Richard B. Lyle, II, Esquire, Timothy G. Willard, Esquire, and Robert H. Robinson, Jr. Esquire. All have filed affidavits in response to your allegations. Your motion was filed in a timely manner.

Before addressing your allegations, I must first determine whether there are any procedural bars preventing consideration of your allegations.<sup>2</sup> I find that each ground raised in your Motion for Postconviction Relief is barred because it was not raised on appeal. Superior Court Criminal Rule 61(i)(3) provides that "any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows: (A) cause for relief from the procedural default and (B) prejudice from violation of the movant's rights." This bar applies to cases in which the defendant did not file an appeal, but subsequently filed a motion for postconviction relief.<sup>3</sup> To overcome this default, you must, in your motion for postconviction relief, establish both cause for not raising the issues on appeal and actual prejudice resulting from the alleged errors.<sup>4</sup> You have made no effort to explain your failure to pursue your appeal before the Supreme Court. All of your allegations were known to you prior to trial and could have been raised and decided on appeal by the Supreme Court. Without explanation, you chose not to pursue your appeal. Therefore, your claims are barred by Superior Court Criminal Rule 61(i)(3).

<sup>&</sup>lt;sup>2</sup> Younger v. State, 580 A.2d 552, 554 (Del. 1990).

<sup>&</sup>lt;sup>3</sup> Jones v. State, 567 A.2d 34, 1989 WL 90735 (Del. July 31, 1989)(TABLE).

<sup>&</sup>lt;sup>4</sup> *Id* at 2.

## IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

ESB/sal

Prothonotary Counsel cc: