

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

STATE OF DELAWARE)	
)	
v.)	ID No. 9712003463
)	
JOHN MILLER,)	
)	
Defendant.)	

Submitted: February 24, 2014
Decided: May 20, 2014

On Defendant's *Pro Se* Motion for Postconviction Relief. DENIED.

ORDER

Richard Zemble, Esquire, Department of Justice, 820 North French Street,
Wilmington, Delaware 19801.

John Miller, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna,
Delaware 19977. *Pro se*.

CARPENTER, J.

DISCUSSION¹

In a letter filed on September 26, 2013, Defendant asked this Court to allow him to file another Rule 61 Motion.² Defendant argued that he had new and alternative grounds for postconviction relief, which he claims have never been analyzed by this Court before. Specifically, Defendant wishes to argue for ineffective assistance of counsel on his appeal from the underlying conviction.

As Defendant acknowledges, he did raise ineffective assistance on appeal in 2002. The Court summarized his argument as “Counsel was ineffective for not raising or aiding the defendant on direct appeal.”³ The Court analyzed the argument as follows:

Miller’s remaining claims of ineffective assistance relate to his direct appeal. Counsel is accused of not aiding in that appeal, not giving him enough time to raise appeal issues, and not allowing him to amend his appeal to raise more issues. In making these claims, Miller cites to correspondence to counsel, to the Supreme Court, and to the disciplinary counsel about wanting to raise additional issues. He does not, even over three years later, say what the additional issues were or are. He has failed, therefore, to provide the specificity of allegation of attorney error which is required and thus these claims fail. In other words, the Court will not entertain conclusory allegations of ineffectiveness.

¹ On February 24, 2014, Defendant also filed a “Motion to Void the Contract Between John E. Miller and the Attorney General”, arguing that the plea agreement is unenforceable for lack of consideration. The Court finds this argument to be without merit and will not address the Motion any further.

² If the Court was to allow this filing, it would be the sixteenth postconviction motion filed in this matter.

³ *State v. Miller*, RN97-12-0663-R1, at 6, Herlihy, J. (Del. Super. Dec. 2, 2002), *aff’d*, 840 A.2d 1229 (Del. 2003).

Miller also accuses counsel of not helping him with his appeal and of not giving him enough time to raise issues on direct appeal. Again, he has not specified what those issues would have been. He lists a series of correspondence as he did before, with other claims in this motion, but still never mentions what the issue would have been. He asks the Court to compel production of the Department of Correction's Legal Mail Activity Log to corroborate that he sent all the correspondence just mentioned. This is circular. The Court returns to the same point and that is Miller's failure to show prejudice by specifying what issues his lawyer would have or should have raised and the likelihood there would have been a reversal. Accordingly, without these showings, this claim fails.⁴

Here, recognizing the prior defect, Defendant has outlined what specific issue he wishes to address in his ineffective assistance of counsel argument. It can be summarized as follows: counsel was ineffective for not arguing on appeal that the indictment was fatally defective and, instead, filing a "no merit" brief claiming there were no appealable issues. Although couched in the appeal context, Defendant's argument about the defectiveness of the indictment has been raised and fully analyzed multiple times by this Court.⁵ As the Court stated in the 2002 opinion,

A guilty plea operates to waive defects in prosecution expect as to jurisdiction. In addition, Miller's plea acts as a waiver to any defect in his charge. Even if the indictment was defective in not containing all the necessary elements of robbery in the first degree and even if those

⁴ *Id.* at 19-20 (internal citations omitted).

⁵ *See, e.g., State v. Miller*, RN97-12-0663-R1, Slight, J. (Del. Super. June 6, 2007); *State v. Miller*, 2006 WL 1148679 (Del. Super. Jan. 5, 2006), *aff'd*, 901 A.2d 120 (Del. 2006); *State v. Miller*, RN97-12-0663-R1, Herlihy, J. (Del. Super. Dec. 2, 2002), *aff'd*, 840 A.2d 1229 (Del. 2003).

elements could not have been proven at trial, Miller, nonetheless, waived raising those objections.⁶

Therefore, Defendant has not raised any novel issues which warrant this Court's further attention. Instead, Defendant has attempted to merely recharacterize his past arguments in new light and such repetitive and frivolous motions should not warrant leave of court.⁷

Accordingly, Defendant's Request for Leave of the Court to file a Postconviction Motion is, hereby, DENIED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

⁶ *State v. Miller*, RN97-12-0663-R1, at 22, Herlihy, J. (Del. Super. Dec. 2, 2002), *aff'd*, 840 A.2d 1229 (Del. 2003) (internal citations omitted).

⁷ *See State v. Johnson*, 768 A.2d 469 (Del. 2000) (admonishing a defendant for filing repetitive and frivolous motions for postconviction relief).