SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

February 2, 2015

STATE MAIL - N443
Lester J. Hickman
SBI# 12
JTVCC
1181 Paddock Road
Smyrna, DE 19977

RE: State of Delaware v. Lester J. Hickman
Def. ID# 0104000979

Date Submitted: December 11, 2014

Dear Mr. Hickman:

This is my decision on your fifth Motion for Postconviction Relief and Motion for Correction of Sentence. You were charged by Information on April 2, 2001, with Trafficking in Cocaine, Possession with the Intent to Deliver Cocaine, Maintaining a Dwelling for Keeping Controlled Substances, Conspiracy in the Second Degree, Possession of Cocaine, and Possession of Drug Paraphernalia. You were convicted of Trafficking in Cocaine, Possession with the Intent to Deliver Cocaine, Maintaining a Dwelling for Keeping Controlled Substances, and Possession of Drug Paraphernalia on August 30, 2001. In your fifth Motion for Postconviction relief you argue that the State committed a *Brady* violation when it failed to inform you about governmental

misconduct in the Office of the Medical Examiner. In your Motion for Correction of Sentence you argue that you were illegally sentenced.

I. Motion For Postconviction Relief

You argue that you are entitled to relief under Superior Court Criminal Rule 61 due to the State's alleged failure to disclose *Brady* material.[1] It is well-settled law that a *Brady* violation occurs where there is a "suppression by the prosecution of evidence favorable to the accused...[that] violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."[2] The *Brady* requirements promote the fair administration of justice and prevent the miscarriage of justice by requiring prosecutors to "turn over all favorable evidence to the accused" in order to "ensure a fair trial."[3] The Delaware Supreme Court has identified the three components of a *Brady* violation as "(1) evidence exists that is favorable to the accused, because it is either exculpatory or impeaching; (2) that evidence is suppressed by the State; and (3) its suppression prejudices the defendant."[4]

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[1] I have concluded, as a preliminary matter, that consideration of your motion is proper pursuant to Rule 61(d)(2)(i).

[2] *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

[3] *Wright v. State*, 91 A.3d 972, 987 (Del. 2014).

[4] *Id.* at 988 (citing *Starling v. State*, 882 A.2d 747, 756 (Del. 2005)).

You argue that the State failed to disclose to your trial attorney evidence of governmental misconduct in the Office of the Medical Examiner. You argue that you could have used this evidence to impeach the credibility of the State's forensic expert who testified at your trial. A multi-day evidentiary hearing took place in 2014 in New Castle County to determine the "damage" done to the State's ability to proceed with pending cases where the drug evidence passed through the Office of the Medical Examiner. The State has brought charges against persons in the chain of custody in many of the pending cases. The Court ruled that there was evidence of pilfering or stealing of drugs by a person or persons for their own use.[5] There was no evidence of "planting" drugs to get a false conviction.[6] There was also no evidence that the actual chemical analyses done by the chemists was false.[7] I do not find any *Brady*[8] issues arising from the State's failure to provide the potential impeaching evidence in the chain of custody because these problems or issues were not known until January 2014. The evidence of pilfering or theft of drugs at the Office of the Medical Examiner in 2014 simply does not raise an inference that such misconduct occurred

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[5] *State v. Irwin*, 2014 WL 6734821, at *9 (Del. Super., Nov. 17, 2014).

[6] *Id.*

[7] *Id.*

[8] 373 U.S. 83 (1963).

13 years ago when your case was proceeding to trial and was tried or that it was the type of conduct that would have affected your trial.

Regarding your case specifically, you argue that your convictions are suspect because the chemist who originally tested the drugs in your case, Farnam Daneshgar, is currently facing two counts of Falsifying Business Records, one count of Possession of Marijuana, and one count of Possession of Drug Paraphernalia. According to the Superior Court's decision in *Irwin*, these charges arose out of the investigation into the Office of the Medical Examiner by the Delaware State Police, but were not directly related to the drugs missing from the Office of the Medical Examiner's drug lab.[9] Aside from the fact that Daneshgar's charges are both unrelated to your case and the missing drugs in the Office of the Medical Examiner's drug lab, the fatal flaw with your argument is that Daneshgar did not testify against you at your trial. Daneshgar was on vacation and unavailable to testify. The drugs in your care were retested by another forensic chemist, Josephine Tengonciang. Tengonciang testified at your trial. Tengonciang told the jury that all of the lab's procedures were followed and that the drugs she tested were crack cocaine. Tengonciang also addressed the discrepancy in the manner in which she and Daneshgar described the cocaine. Daneshgar's report described the cocaine as being

[9] *Irwin,* 2014 WL 6734821, at *1, n.4.

a powdery white substance. Tengonciang described the cocaine as being a chunky white substance. Thus, the issue you now complain about was heard by the jury and resolved by it against you. I conclude that your specific argument has no more merit than your general argument about the Office of the Medical Examiner's drug lab.

Your fifth Motion for Postconviction Relief is **DENIED**.

IT IS SO ORDERED.

II. Motion for Correction of Sentence

You argue that you were sentenced illegally. Specifically, you argue that you were improperly sentenced as an habitual offender and subjected to double jeopardy. Your allegations are repetitive and tiresome. This Court and the Supreme Court have examined your sentence on numerous occasions. After your initial conviction, the Supreme Court and the State both agreed the jury should not have returned a guilty verdict on both Trafficking in Cocaine and Possession of Cocaine because it constituted double jeopardy. The Supreme Court vacated your conviction for Possession of Cocaine[10] and remanded the matter back to this Court where you were resentenced in accordance with the Supreme Court's Order. Therefore, your double jeopardy allegation is without merit and has no relevance to your current sentence.

This Court has previously examined your allegation that you were improperly

[10] *Hickman v. State*, 801 A.2d 10, 2002 WL 1272154 (Del. June 7, 2002)(TABLE).

sentenced as an habitual offender under Delaware's Habitual Offender Act pursuant to 11 *Del. C.* § 4214.[11] It was determined then, and is still the case now, that you had the necessary predicate offenses to support your classification as an habitual offender.[12] The Supreme Court affirmed this Court's decision in your first Motion for Postconviction Relief, which dealt with your habitual offender sentencing.[13] You have presented nothing new in your current Motion for Correction of Sentence that would cause this Court to rethink your sentence.

Your Motion for Correction of Sentence is **DENIED.**

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

ESB/sal
cc: Prothonotary
Counsel

[11] *State v. Hickman*, 2004 WL 1172347 (Del. Super. Feb. 6, 2004).

[12] *Id.*

[13] *Hickman v. State*, 860 A.2d 810, 2004 WL 2291343 (Del. Oct. 4, 2004)(TABLE).