

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE, :
 : I.D. No. 1003006262
 v. :
 :
 JAMES J. DURHAM, :
 :
 Defendant. :

ORDER

On this 30th day of April, 2015, upon consideration of the Defendant's Motion for Postconviction Relief, the Affidavit of prior counsel, the State's Response, the Commissioner's Report and Recommendation, Defendant's Appeal of the Commissioner's Report and Recommendation, the State's Response to the Appeal, and the record in this case, it appears that:

The Defendant, James J. Durham, was found guilty on October 7, 2010 by a jury to one count of Robbery First Degree, one count of Wearing a Disguise During the Commission of a Felony, one count of Conspiracy Second Degree, and one count of Assault Third Degree. Defendant was sentenced as an habitual offender to a total of 32 years mandatory at Level 5, suspended after serving 31 years, followed by probation.

Defendant appealed his conviction to the Delaware Supreme Court which was affirmed on January 3, 2012..

Thereafter, Defendant filed a motion for postconviction relief wherein he alleged eight grounds for relief, including ineffective assistance of counsel.

The matter was referred to the Court Commissioner for findings of fact and recommendation pursuant to 10 *Del. C.* § 512(b) and Superior Court Criminal Rule

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62. Commissioner Freud has filed a Report and Recommendation recommending that the Court deny defendant's motion for postconviction relief. The Defendant filed an Appeal from Commissioner's Report and Recommendation and the State responded. Defendant's appeal does not advance his motion for postconviction relief in any substantive way.

NOW, WHEREFORE, after a careful and *de novo* review of the record in this action, and for the reasons stated in the Commissioner's Report and Recommendation dated October 15, 2013,

IT IS ORDERED that the thoughtful and well-reasoned Commissioner's Report and Recommendation is adopted by the Court and defendant's Motion for Postconviction Relief is ***denied*** as procedurally barred for failure to prove cause and prejudice, and as meritless.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Hon. Andrea M. Freud
Stephen R. Welch, Jr., Esquire
John R. Garey, Esquire
File