

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

STATE OF DELAWARE,	)	
	)	
v.	)	ID#: 0001010220
	)	
MICHAEL JASINSKI,	)	
	)	
Defendant.	)	

**ORDER**

**Upon Defendant’s Motion for Postconviction Relief –  
*SUMMARILY DISMISSED.***

1. Having pled guilty on August 3, 2000, Defendant was convicted of several sex offenses. On December 1, 2000, Defendant was sentenced to 20 years in prison, suspended after 12 years for probation at decreasing levels, starting at Level 4.

2. When Defendant was released to home confinement, he violated probation by missing three, treatment-related obligations. Accordingly, on June 22, 2011, Defendant was found in violation of probation and resentenced.

3. On March 28, 2012, Defendant was again found in violation of probation and was sentenced to prison followed by work release, and so on.

4. Defendant did not take an appeal from his initial conviction. Most importantly for the present purposes, Defendant did not take an appeal from either violation of probation. Instead, after a motion for modification of sentence was denied, he filed this motion for postconviction relief on December 18, 2012. As discussed below, Defendant's failure to appeal the March 28, 2012 sentence was a procedural default.

5. The Prothonotary properly referred the motion for postconviction relief and, upon preliminary review, it appears that the motion is subject to summary dismissal.<sup>1</sup>

6. Defendant challenges the March 28, 2012 violation of probation hearing in two ways. First, he protests his "actual innocence" of the violation. Alternatively, he argues that the probation officer and the court abused their discretion. Defendant's abuse of discretion argument is not entirely clear. Mostly, it appears Defendant challenges the sentence's appropriateness. Specifically, Defendant alleges that the probation officer "hoodwinked" the court about the suitability of Defendant's remaining at home confinement and the treatment Defendant requires.

7. As to Defendant's actual innocence claim, he misconstrues the violation of probation. The court understood that Defendant needed to seek

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<sup>1</sup> See Super. Ct. Crim R. 61(d), 61(d)(4).

treatment at the emergency room when he did. The violation, however, was founded on Defendant's having injured himself intentionally in order to make it necessary that he be seen by emergency room personnel.

8. As for the claim that the court was misled about Defendant's suitability for home confinement, Defendant has serious psycho/sexual problems. Regrettably, it appears Defendant needs more supervision than his family can provide at home. Defendant's March 12, 2012 emergency room visit underscores the point.

9. With the above as a backdrop, upon preliminary review it appears Defendant's motion for postconviction relief is procedurally barred because Defendant failed to take an appeal and he has not shown cause or prejudice.<sup>2</sup> The questions about whether the violation was established and the sentence was justified should have been raised through timely appeal.

For the foregoing reasons, Defendant's motion for postconviction relief is **SUMMARILY DISMISSED**. Prothonotary shall notify Movant.

**IT IS SO ORDERED.**

Date: February 20, 2013 /s/ Fred S. Silverman  
Judge

oc: Prothonotary (Criminal)  
pc: Martin B. O'Connor, Deputy Attorney General  
Michael J. Jasinski, Defendant

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<sup>2</sup> Super. Ct. Crim. R. 61(i)(3)(A)-(B).