

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

May 20, 2013

Robert L. Jones
SBI# 002
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: *State of Delaware v. Robert L. Jones*, Def. ID# 89S04104DI (R-2)

DATE SUBMITTED: March 22, 2013

Dear Mr. Jones:

Pending before the Court is the motion of defendant Robert L. Jones ("defendant") for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). This is my decision denying the motion.

On May 16, 1990, a jury found defendant guilty of the charges of unlawful sexual intercourse in the first degree (count 1), unlawful sexual penetration in the third degree (count 2), and unlawful imprisonment in the second degree (count 3). His August 3, 1990 sentence as to the three convictions was life, with a twenty year mandatory term (count 1); five years at Level 5, suspended for five years of probation

at Level 3 (count 2); and one year at Level 5 suspended for five years at Level 3 probation (count 3).

Defendant appealed, and the Supreme Court affirmed the judgment below.¹ Thereafter, defendant, through privately-retained counsel (“postconviction counsel”), filed a motion for postconviction relief. Postconviction counsel raised numerous claims based upon ineffective assistance of trial counsel. Trial counsel submitted an affidavit in response to those claims. The Superior Court denied the motion, and the Supreme Court affirmed this denial.²

Defendant thereafter filed a writ of habeas corpus with the United States District Court in and for the District of Delaware, seeking relief. The District Court ruled sufficient evidence supported defendant’s convictions; the trial judge properly found the victim competent to testify and her testimony was not so grossly unreliable that its introduction raised questions about the reliability of Jones’ convictions; and there was no prejudice associated with the admission of the hearsay statements.³ It concluded the petition failed on its merits.

¹*Jones v. State*, 599 A.2d 413, 1991 WL 134477 (Del. June 19, 1991).

²*State v. Jones*, 1992 WL 179392 (Del. Super. June 19, 1992), *aff’d*, 622 A.2d 1095, 1993 WL 61702 (Del. Feb. 23, 1993).

³*Jones v. Snyder*, 1999 WL 33220030 (D. Del. May 4, 1999).

On March 19, 2013, defendant filed his second motion for postconviction relief. He asserts the following grounds for relief.

Ground One: Ineffective Assistance of Counsel

On the defendants [sic] direct appeal and his Post Conviction Relief, neither counsel hired an investigator, medical experts, GYN-OB expert to prove defendants [sic] innocence

Ground Two: Ineffective Assistance of Counsel

In lieu of the Martinez vs. Ryan case from the U.S. Supreme Court, neither counsel provided the defendant with effective assistance according to the standard of Martinez.

Ground Three: Actual Innocence

There is not any evidence, no physical proof of any sexual penetration which can be easily proved.

Defendant explains he did not raise these grounds before because he was not aware of them since he is not a lawyer.

When addressing a Rule 61 motion, the Court is required to examine whether a defendant's motion is procedurally barred before it examines the merits. The procedural bars of Rule 61(i) which applied to defendant's case⁴ are as follows:

Bars to relief. (1) Time limitation. A motion for postconviction relief may not be filed more than three years after the judgment of conviction

⁴This is the version of Rule 61 in effect as of January 1, 1992, which applied to defendant. The rule was changed effective July 1, 2005, to shorten the time frame for filing a postconviction motion from three years to one.

is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than three years after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.

(2) Repetitive motion. Any ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim is warranted in the interest of justice.

(3) Procedural default. 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.

(4) Former adjudication. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.

(5) Bars inapplicable. The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

I examine the procedural bars within the context of each individual ground for relief. I start with ground two because it is the only one in which defendant attempts to overcome the procedural bars.

Defendant's second ground for relief is based upon the contention that, in the case of *Martinez v. Ryan*,⁵ the United States Supreme Court established a newly

⁵ ___ U.S. ___, 132 S. Ct. 1309, 182 L.Ed.2d 272 (2012) ("*Martinez*").

created right which thereby provides relief from the time bar of Rule 61(i)(1). Although in all other situations the three-year time bar noted earlier in this decision applies, if a “new right” is created, then “a defendant whose action is otherwise time barred has one year to file the motion from the date the new right was established. [Footnote and citation omitted.]”⁶

The United States Supreme Court decided *Martinez* on March 20, 2012, and defendant filed his motion on March 19, 2013. Thus, if *Martinez* created a new right, then the motion was timely filed.

However, *Martinez* did not create a constitutional right, which is the type of “right” Rule 61(i)(1) encompasses.⁷ The United States Supreme Court’s holding in *Martinez* was that “in federal habeas actions, defendants would be able to avoid procedural default in federal court due to what happened in the earlier state postconviction actions” and that holding “is limited only to that narrow procedural

⁶*State v. Travis*, 2013 WL 1196332, *1 (Del. Super. March 25, 2013) (“*Travis*”). Rule 61(i)(1) currently provides:

A motion for postconviction relief may not be filed more than one year after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.

⁷*State v. Travis*, *supra* at *2.

situation under federal law concerning *habeas corpus*.”⁸ As the Superior Court concluded in *Travis*, “[t]his cannot qualify as a ‘new right’ under Rule 61(i)(1).”⁹

In *Travis*, the Court further ruled, “[s]ince *Martinez* did not establish a new constitutional right, it cannot be applied retroactively.”¹⁰

Thus, the time bar applies to this conclusory ineffective assistance of counsel claim.

The conclusory ineffective assistance of counsel claim against trial counsel is barred because it has been formerly adjudicated and defendant has made no argument that it should be considered in the interest of justice.¹¹

The conclusory ineffective assistance of counsel claim against postconviction counsel is barred because defendant failed to raise it earlier and because he has failed to make any attempt to show how consideration of the claim is warranted in the interest of justice.¹²

⁸*Id.*

⁹*Id.* Accord *State v. Smith*, 2012 WL 5577827, *1 (Del. Super. June 14, 2012), *aff’d*, 53 A.3d 303, 2012 WL 3870567 (Del. Sept. 6, 2012) (*Martinez v. Ryan* “does not provide a constitutional right to have effective counsel at the initial post-conviction proceedings in order to raise an ineffective assistance of counsel claim against trial counsel.”)

¹⁰*Id.* at *3.

¹¹Rule 61(i)(4).

¹²Rule 61(i)(2).

Furthermore, defendant has failed to show the procedural bars are inapplicable pursuant to Rule 61(i)(5), as he has not advanced any colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

Finally, even if the Court ruled the claims of ineffective assistance of trial and postconviction counsel were not barred, the claims fail because they are conclusory.¹³ Defendant has made no attempt to explain how either counsel were ineffective.

Ground two is denied.

Ground one, that trial counsel and postconviction counsel were ineffective because neither “hired an investigator, medical experts, GYN-OB expert to prove defendants [sic] innocence”, is procedurally barred. First, it is time-barred in that it has been brought nearly twenty-two years after defendant’s judgment of conviction became final on July 8, 1991, when the Supreme Court’s mandate on the appeal¹⁴ was filed.¹⁵ Defendant has made no effort to overcome that time bar; he has not advanced any colorable claim that there was a miscarriage of justice because of a constitutional

¹³*Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

¹⁴Docket Entry No. 30.

¹⁵Rule 61(i)(1).

violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.¹⁶ The claim also is barred because defendant failed to raise it in his first Rule 61 motion.¹⁷ He has made no effort to overcome that procedural bar, either, in that he neither has shown that consideration of the claim is warranted in the interest of justice¹⁸ nor has he advanced any colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.¹⁹

Even if the procedural bars did not apply, the claim would fail because it is conclusory.²⁰

Ground one is denied.

I turn to ground three, wherein defendant argues that he actually was innocent. In support thereof, he contends there was “not any evidence, no physical proof of any sexual penetration.” This claim is procedurally barred, also. It is time-barred.²¹

¹⁶Rule 61(i)(5).

¹⁷Rule 61(i)(2).

¹⁸*Id.*

¹⁹Rule 61(i)(5).

²⁰*Younger v. State*, 580 A.2d at 555.

²¹Rule 61(i)(1).

Defendant has made no effort to overcome that time bar; he has not advanced any colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.²² The claim also is barred because defendant failed to raise it in his first Rule 61 motion.²³ He has made no effort to overcome that procedural bar, either, in that he neither has shown that consideration of the claim is warranted in the interest of justice²⁴ nor has he advanced any colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.²⁵ Furthermore, defendant's innocence and the sufficiency of the evidence have been formerly adjudicated. A jury found him to be guilty and the Supreme Court affirmed that finding, concluding sufficient evidence existed.²⁶ The District Court also ruled sufficient evidence existed.²⁷ Thus, Rule 61(i)(4) bars his claim. Defendant has failed to advance any

²²Rule 61(i)(5).

²³Rule 61(i)(2).

²⁴*Id.*

²⁵Rule 61(i)(5).

²⁶*Jones v. State*, 599 A.2d.

²⁷*Jones v. Snyder*, *supra* at *2.

reason why a reconsideration of this claim is warranted in the interest of justice.²⁸

Defendant's third claim fails.

For the foregoing reasons, defendant's motion for postconviction relief is

DENIED.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

cc: Prothonotary's Office
Department of Justice
Public Defender's Office
Edward C. Gill, Esquire

²⁸Rule 61(i)(4).