

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

STATE OF DELAWARE,)	
)	
)	
v.)	ID#: 0608025757
)	
LEROY COOK, Sr.)	
Defendant.)	

ORDER

**Upon Defendant’s Sixth Motion for Postconviction Relief –
SUMMARILY DISMISSED;
Upon Defendant’s Second Motion for Appointment of Counsel –
DENIED as Frivolous.**

1. On December 20, 2013, Defendant filed this, his sixth motion for postconviction relief since he pleaded guilty to one count of Rape Second Degree, just before jury selection on January 8, 2008. Defendant also filed his second request for court-appointed counsel, basically, a *Martinez v. Ryan*¹ motion.

2. Defendant did not file a direct appeal after his guilty plea in 2008. Instead, he filed his first postconviction relief motion on October 29, 2008, along with a request for another court- appointed counsel. (Actually, the court-appointed attorney who represented Defendant when Defendant pleaded guilty was his second.)

¹ *Martinez v. Ryan*, 132 S. Ct. 1309 (2012).

Defendant's first motions were litigated and denied. The denial was affirmed February 26, 2010.²

3. Since 2010, Defendant has filed five more motions under Superior Court Criminal Rule 61, including this one. He filed unsuccessful appeals from them all.³

4. This time, Defendant asks to re-litigate his rejected claim that the indictment, to which he pleaded guilty in-part, was defective and amended improperly.⁴ He also now makes two, related claims of ineffective assistance of counsel. In one, he challenges trial counsel's allowing Defendant to plead guilty to a defective indictment. In the other, he alleges trial counsel refused to file a direct appeal from his plea and sentence.

5. The case's procedural history has been written and Defendant's challenges to the indictment have been addressed.⁵ Thus, upon preliminary review,⁶ it appears his claim has been previously litigated. If it could be said that Defendant's sixth motion raises something new, which it does not, that claim is defaulted and Defendant has not shown cause or prejudice.⁷

² *Cook v. State*, 991 A.2d 17 (Del. 2010).

³ *Id.*; *Cook v. State*, 5 A.3d 629 (Del. 2010); *Cook v. State*, 15 A.3d 216 (Del. 2011); *Cook v. State*, 49 A.3d 1192 (Del. 2012); *Cook v. State*, 58 A.3d 982 (Del. 2012).

⁴ *See State v. Cook*

⁵ *State v. Cook*, 2010 WL 2244372 (Del. Super. 2010) *aff'd*, 5 A.3d 629 (Del. 2010).

⁶ Super. Ct. Crim. R. 61(d)(4).

⁷ Super. Ct. Crim. R. 61(i)(3).

6. No further review is warranted in the interest of justice or for Constitutional purposes. As explained before, Defendant's guilt is patent, and his plea was voluntary and to his benefit. Not only that, it appears the motions, including the repetitive requests for appointment of counsel, are frivolous.

For the foregoing reasons, Defendant's sixth motion for postconviction Relief is **SUMMARILY DISMISSED** and his second request for counsel is **DENIED as frivolous**. Prothonotary **SHALL** notify Defendant.

IT IS SO ORDERED.

Date: March 24, 2014

/s/ Fred S. Silverman
Judge

cc: Prothonotary (Criminal Division)
Renee L. Hrivnak, Deputy Attorney General
Leroy Cook, Sr., Defendant