

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

April 30, 2014

John M. Franklin  
SBI# 002  
SCI  
P.O. Box 500  
Bldg. Merit East  
Georgetown, DE 19947

RE: *State of Delaware v. John M. Franklin*, Def. ID# 0304010407C (R-4)

DATE SUBMITTED: April 17, 2014

Dear Mr. Franklin:

Defendant John M. Franklin (“defendant”) has filed his fourth motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“R. 61” or “Rule 61”).<sup>1</sup> He also has filed several associated motions: motions for the appointment of counsel, to expand the record and for an evidentiary hearing.

I first address defendant’s motion for appointment of counsel. He argues that because he was not afforded trial counsel on his first postconviction motion, he is entitled to an attorney now and he also should be allowed to reassert, with the assistance of an attorney, all the

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<sup>1</sup>The motion was not filed on the required form. In the future, the Court will reject and return any Rule 61 motion not filed on the required form.

postconviction claims he previously has filed. I assume defendant is arguing a recent rule change to Rule 61(e)<sup>2</sup> and some recent case law support these contentions.

The May 6, 2013 and February 1, 2014 amendments to Rule 61(e), which provide for the appointment of counsel for an indigent defendant's **first timely filed** Rule 61 motion, were not retroactive and did not create any rights to an attorney for a defendant who previously has filed postconviction motions.<sup>3</sup> Furthermore, recent decisions in the cases of *Martinez v. Ryan*<sup>4</sup> or *Holmes v. State*<sup>5</sup> did not establish a constitutional right to an attorney on a postconviction motion or the opportunity for a defendant to redo his or her Rule 61 motion without the procedural bars applying.<sup>6</sup> At this stage of the proceedings, defendant is entitled to an attorney "only in the

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<sup>2</sup>The applicable version of Rule 61(e)(1) provides, with regard to all petitions filed after February 1, 2014:

(e) Appointment of counsel. (1) Order of appointment. The court will appoint counsel for an indigent movant's first timely postconviction proceeding. For an indigent movant's untimely first postconviction proceeding or an indigent movant's second or subsequent postconviction proceedings, the court will appoint counsel only in the exercise of discretion and for good cause shown, but not otherwise. Unless the judge appoints counsel for a limited purpose, it shall be the duty of counsel to assist the movant in presenting any substantial ground for relief available to the movant. Upon entry of a final order in a postconviction proceeding, counsel's continuing duty shall be provided in Supreme Court Rule 26.

<sup>3</sup>*State v. Roten*, Def. ID# 0907011738, Bradley, J. (Del. Super. Sept. 3, 2013), *aff'd*, 2013 WL 5808236 (Del. Oct. 28, 2013); *State v. Roten*, 2013 WL 4744681 (Del. Super. Sept. 3, 2013), *aff'd*, 2013 WL 5808121 (Del. Oct. 28, 2013).

<sup>4</sup> \_\_\_ U.S. \_\_\_, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012).

<sup>5</sup>2013 WL 2297072 (Del. May 23, 2013).

<sup>6</sup>*Frazier v. State*, 2014 WL 259434 (Del. Jan. 21, 2014); *Riley v. State*, 2014 WL 98643 (Del. Jan. 9, 2014).

exercise of discretion and for good cause shown”.<sup>7</sup> Because, as discussed below, the procedural bars clearly apply, no need exists to appoint counsel to represent defendant in this pending motion. His request for an attorney is **DENIED**.

I next address defendant’s motion to expand the record. Defendant has submitted nothing new or of legal or factual significance in support of a motion to expand the record. Thus, that motion is **DENIED**.

I consider his motion for an evidentiary hearing. In light of the ruling below that the motion is clearly barred on procedural grounds, no needs exists to hold an evidentiary hearing. That motion is **DENIED**.

I now turn to the motion for postconviction relief.

This Court’s decision on defendant’s third Rule 61 motion thoroughly outlines the procedural posture of this case as well as two other cases against him and the various postconviction claims and attempts for relief he has made over the years.<sup>8</sup> The decision on the third motion for postconviction relief as well as previous decisions set forth the actual, established facts.<sup>9</sup> Defendant’s arguments in the pending fourth motion are based on his version

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<sup>7</sup>Rule 61(e)(1).

<sup>8</sup>*State v. Franklin*, 2012 WL 6914478 (Del. Super. Nov. 7, 2012), *aff’d*, 69 A.3d 371, 2013 WL 3149070 (Del. June 18, 2013). This decision contains the correct version of the facts.

<sup>9</sup>Besides the decision on the third motion for postconviction relief, the facts and procedural posture are well-established in the following decisions: *Franklin v. State*, 869 A.2d 327, 2005 WL 528674 (Del. March 2, 2005) (decision on direct appeal); *State v. Franklin*, 2005 WL 3193713 (Del. Super. Nov. 29, 2005), *aff’d*, 901 A.2d 119, 2006 WL 1374675 (Del. May 17, 2006) (decision on first motion for postconviction relief); *State v. Franklin*, 2007 WL 2823328 (Del. Super. Sept. 26, 2007), *aff’d*, 956 A.2d 642, 2008 WL 361143 (Del. Feb. 12, 2008) (decision on second motion for postconviction relief); *Franklin v. Phelps*, 2009 WL 3831375 (D. Del. Nov. 16, 2009), *rearg. den.*, 2010 WL 3791972 (D. Del. Sept. 22, 2010).

of the facts, which are not the actual facts as established by the record. Defendant has failed to present his case on the facts as established, and his version of the facts and the arguments based on that version are ignored.

Defendant was convicted of five counts of rape in the first degree, one count of terroristic threatening, and one count of endangering the welfare of a child. He was sentenced to substantial periods of incarceration, 75 years of which are mandatory. The Supreme Court's mandate affirming the Superior Court judgment<sup>10</sup> was dated March 18, 2005.

The first step this Court takes in addressing a postconviction motion is to determine whether the procedural bars of Rule 61 prevent its consideration or whether defendant has overcome the bars.<sup>11</sup>

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<sup>10</sup>*Franklin v. State*, 869 A.2d.

<sup>11</sup>When defendant was convicted, the applicable provision of Rule 61(i) provided:

*Bars to relief.* (1) Time limitation. A motion for postconviction relief may not be filed more than three years 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 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

I outline his claims below.

Defendant raises procedural claims based upon the fact that the prosecution proceeded by information rather than indictment and upon his conclusory contention that the information was vague. He then argues that trial counsel was ineffective for failing to object to these alleged defects.

Defendant asserts claims of prosecutorial misconduct. He argues trial counsel was ineffective for failing to object to these allegations of prosecutorial misconduct.

He lists alleged instances of ineffective assistance of counsel, both at trial and on appeal.

Defendant attacks the victim's credibility on several fronts and asserts that trial counsel was ineffective for not raising these credibility issues.

Defendant advances a completely unsupported and factually incorrect claim that someone posing as Detective Laurence D. Corrigan interviewed him.<sup>12</sup> He argues trial counsel was ineffective for failing to investigate this impersonator and move to suppress the statement given to the impersonator.

Defendant asserts that counsel at preliminary hearings was ineffective for waiving his preliminary hearing.

Defendant asserts the trial court abused its discretion in allowing bad acts to come in

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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.

<sup>12</sup>As this Court noted in its ruling on the third motion for postconviction relief, Detective Corrigan's interview is Exhibit #15 in the case of *State v. Franklin*, Def. ID# 0304010407C. *State v. Franklin*, 2012 WL 6914478 at \*1 n. 4.

under Delaware Rules of Evidence, Rule 404(b), in allowing the prosecutor to interject a racial element into the trial by allowing a video into evidence, in allowing the prosecutor to fabricate the victim's testimony, and in allowing Rule 16 and *Brady*<sup>13</sup> violations to occur.

Defendant asserts that the fraud and violations of Court rules which the State allegedly committed constitute exceptions to the procedural bars. He also argues that the various alleged errors which occurred throughout the proceedings in and of themselves deprived him of a fair trial and the miscarriage of justice exception applies.

The claims in the pending motion are procedurally barred as untimely,<sup>14</sup> repetitive,<sup>15</sup> defaulted,<sup>16</sup> and/or formerly adjudicated.<sup>17</sup> Defendant has made no valid argument based on the established facts that a constitutional violation occurred,<sup>18</sup> he has not established that a newly recognized retroactively applicable right exists,<sup>19</sup> and he has not established his claim should be

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<sup>13</sup>*Brady v. Maryland*, 373 U.S. 83 (1963).

<sup>14</sup>R. 61(i)(1) (the applicable version of the rule at the time defendant's judgment became final required a claim to be filed no later than three years after judgment was final).

<sup>15</sup>R. 61(i)(2) (barring any ground for relief not asserted in a prior postconviction proceeding).

<sup>16</sup>R. 61(i)(3) (barring a claim not previously raised absent cause for relief from the procedural default and prejudice).

<sup>17</sup>R. 61(i)(4)(barring a claim which has been formerly adjudicated).

<sup>18</sup>R. 61(i)(5)(providing that the procedural bars in R. 61(i)(1), (2), and (3) shall not apply 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).

<sup>19</sup>R. 61(i)(1)(an untimely motion may be considered when the defendant asserts a retroactively applicable right that has been newly recognized).

considered in the interest of justice.<sup>20</sup> Because he fails to overcome the procedural bars, his motion must be **DENIED**.

For the forgoing reasons, the pending motions are **DENIED**.

**IT IS SO ORDERED.**

Very truly yours,

*/s/ Richard F. Stokes*

Richard F. Stokes

cc: Prothonotary's Office  
Adam D. Gelof, DAG  
Office of the Public Defender

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<sup>20</sup>R. 61(i)(2) and (4) (barring claim unless consideration is warranted in the interest of justice).