

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

STATE OF DELAWARE,)
)
 v.) ID No. 0408012099
)
 SYLVESTER MILLER)
)
 Defendant.)

Submitted: June 25, 2014
Decided: July 28, 2014

On Defendant's Third Motion for Postconviction Relief – DENIED

ORDER

Kevin Carroll, Esquire, Department of Justice, 820 N. French Street, Wilmington, DE 19801.

Sylvester Miller, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna, DE 19977. *Pro Se* Defendant.

CARPENTER, J.

On this 28th day of July 2014, upon consideration of Defendant's *Pro Se* Motion for Postconviction Relief, it appears to the Court that:

1. On April 2, 2014, Sylvester Miller ("Miller") filed a *Pro Se* Motion for Postconviction Relief, his third, pursuant to Superior Court Criminal Rule 61 ("Rule 61"). In this Motion, Miller raises the following grounds for relief: (1) ineffective assistance of counsel; (2) Fourteenth Amendment violations of due process; (3) insufficiency of evidence for a conviction of rape; and (4) denial of Sixth and Fourteenth Amendment rights to appeal *pro se*. For the reasons set forth below, Defendant's Third Motion for Postconviction Relief ("Rule 61 Motion") is **DENIED.**

2. Following a jury trial, Miller was found guilty on March 28, 2005 of six (6) counts of Rape First Degree and one (1) count of Continuous Sexual Abuse of a Child. On June 17, 2005, Miller was sentenced to a mandatory term of fifteen (15) years imprisonment for each count of Rape, and two (2) years imprisonment followed by a period of probation supervision for the count of Continuous Sexual Abuse of a Child.

3. Two (2) days prior to Miller's sentencing, Miller filed a Motion for Appointment of Counsel, requesting the Court to appoint different counsel to pursue his appeal. This Court issued a letter on July 26, 2005, denying Miller's

request for appointed counsel and explaining that any claim for ineffective assistance of counsel could not be addressed on direct appeal of his conviction. Miller's conviction and sentence were then affirmed on appeal to the Delaware Supreme Court in March 2006. Subsequently, Miller filed his first Rule 61 Motion on July 11, 2006.

4. On January 31, 2007, Miller again filed a Motion for Appointment of Counsel, which this Court denied due to Miller's failure to set forth good cause in support of his request. On October 29, 2007, Miller's first Rule 61 Motion was denied by this Court. Additionally, on November 6, 2007, this Court denied Miller's Motion to Dismiss the indictment. The Supreme Court affirmed this Court's judgment on March 28, 2008.

5. On April 1, 2013, nearly eight (8) years after his conviction, Miller filed his second Rule 61 Motion, which was denied by this Court on July 25, 2013. Such denial was then affirmed by the Delaware Supreme Court on October 23, 2013.

6. Defendant filed his third Rule 61 Motion on April 2, 2014, which was amended on June 25, 2014, and is now before the Court. Prior to addressing the merits of any postconviction claim, the Court must determine whether the

procedural requirements of Rule 61 have been met.¹ Specifically, any ground for relief raised by the Defendant that was not raised at trial or on direct appeal is procedurally barred, unless the Defendant shows both cause for relief and prejudice from a violation of his rights.² Additionally, any grounds for relief previously adjudicated, including those adjudicated in “the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding,” are barred unless “reconsideration of the claim is warranted in the interest of justice.”³

A. *Procedurally Barred Claims*

7. In his Motion, Miller alleges: (1) denial of due process under the Fourteenth Amendment due to the presentation and coaching of a witness who lacked mental capacity; (2) denial of due process because the court allowed the jury to review a video of Miller’s post-arrest, unsworn statements (which he also alleges was a violation of his Fifth Amendment right not to testify); (3) fundamental miscarriage of justice because his conviction was based solely on the victim’s testimony without any physical evidence to corroborate her claims; (4) denial of his Sixth and Fourteenth Amendment rights to proceed *pro se* on

¹ See e.g., *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) (citing *Harris v. Reed*, 489 U.S. 255, 265 (1989)).

² See Super. Ct. Crim. R. 61(i)(3).

³ Super. Ct. Crim. R. 61(i)(4).

direct appeal; (5) denial of Fifth Amendment Rights due to a language barrier which made Miller's waiver of his *Miranda* rights prior to his post-arrest statements invalid; (6) ineffective assistance of counsel (which will be addressed separately below); and (7) alleged *Brady*⁴ violations (which will also be addressed separately below).

8. Miller's claims are similar—if not identical—to the claims he raised in his first and second Rule 61 Motions. The Court again finds that these claims are procedurally barred because they were either not raised on direct appeal or were previously adjudicated on Miller's first and second Rule 61 Motions. Despite this procedural bar, the Court has again reviewed the claims and finds there is no basis to reconsider them under the interest of justice standard.

B. *Ineffective Assistance of Counsel*

9. The Court now turns to Miller's ineffective assistance of counsel claim. Throughout Miller's Motion he alleges ineffective assistance of counsel and additionally seeks review of what he claims are *Brady* violations.⁵ However, all of Miller's purported *Brady* violations involve allegations against his own counsel,

⁴ *Brady v. Maryland*, 373 U.S. 83 (1963).

⁵ *Id.*

not the prosecution. Therefore, the arguments termed as *Brady* violations are more appropriately analyzed under the ineffective assistance of counsel standard.⁶

10. Miller claims counsel was ineffective in the following ways: (1) failing to impeach the victim's testimony at trial regarding her mental capacity and motive/bias for testifying; (2) failing to object to the introduction of a videotape of Miller's post-arrest statements; (3) failing to investigate Miller's case and interview or present potential character witnesses; (4) failing to seek court funds to procure DNA evidence to exonerate Miller; (5) failing to allow Miller access to the police report and victim statements; and (6) failing to file a pretrial motion to suppress.

11. Ineffective assistance of counsel claims are governed by the two-part test established in *Strickland v. Washington*⁷. Specifically, a defendant's claim of ineffective assistance of counsel is subject to a strong presumption that the representation was professionally reasonable.⁸ In order to overcome this presumption, the defendant must establish that: 1) his trial counsel's efforts fell below a reasonable objective standard; and 2) there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's

⁶ *See id.* at 87 ("We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.").

⁷ 466 U.S. 668, 687 (1984); *see also Winn v. State*, 1998 WL 15002 (Del. Jan. 7, 1998).

⁸ *See Winn*, 1998 WL 15002, at *2.

unprofessional errors.⁹ However, “mere allegations of ineffectiveness will not suffice.”¹⁰ Instead, “a defendant must make, and substantiate, specific allegations of actual prejudice.”¹¹ Further, courts must evaluate defense counsel’s conduct at the time of the trial in order to maintain the proper perspective and “eliminate ‘the distorting effects of hindsight.’”¹²

12. This Court previously held that counsel’s decisions regarding the presentation of witnesses or suppression of evidence were tactical decisions that did not fall below an objective standard of reasonableness and, therefore, the Court does not need to address them again here. For those claims not previously addressed, Miller neither explains why he failed to raise them on his first or second Rule 61 Motions nor “advance[s] 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.”¹³ As such, the Court finds Miller’s ineffective assistance of counsel claim to again be barred under the rules of this Court and without merit.

⁹ See *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

¹⁰ *Gattis v. State*, 697 A.2d 1174, 1178.

¹¹ *Id.* at 1178-79.

¹² *Id.* at 1178 (citing *Strickland*, 466 U.S. at 689).

¹³ *State v. Jones*, 2013 WL 2152198, at *3 (Del. Super. May 20, 2013).

C. *Miscellaneous Claims*

13. This Court previously stated that “[a]ny remaining allegations in Mr. Miller’s motion not specifically addressed by the Court are no more than general statements of legal rules or rambling commentary by [him].”¹⁴ The Court finds that this conclusion is again equally applicable here.

Having found that Miller’s claims for relief are without merit, the Defendant’s Third Motion for Postconviction Relief is hereby **DENIED**.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.

¹⁴ *State v. Miller*, 2007 WL 3287943, at *4 (Del. Super. Oct. 29, 2007).