

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

STATE OF DELAWARE)	
)	
)	I.D. No. 0609001673
v.)	
)	
JOHN S. JANCOVIC)	
)	
Defendant)	

Submitted: October 20, 2014
Decided: November 25, 2014

On Defendant's Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

Gregory C. Strong, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State

John S. Jancovic, Wilmington, Delaware, *pro se*

COOCH, R.J.

This 25th, day of November, 2014, upon consideration of Defendant's First Motion for Postconviction Relief, it appears to the Court that:

1. Defendant John S. Jancovic pled guilty in February 2007 of Burglary in the Second Degree. Defendant was then sentenced to four years at Level V, suspended after one year for six

months at Level IV, followed by one year of probation at Level III or II at the Department of Correction's discretion.¹

2. Since his sentencing, Defendant has filed a number of Motions for Correction of Illegal Sentence pursuant to Rule 35. All of the motions have been denied.²
3. Defendant filed the instant motion on October 7, 2014. Defendant asserts several grounds for relief in his motion, all of which are listed here *in toto*:
 - a. "Effective Counseling – I never seen or talked to no attorney at no time before, during, or after my hearing."
 - b. "Unfair Justice – Nobody in court had no kind of paperwork on my case at all at first violation hearing! At trial never did have any counseling! Never got to speak at all."
 - c. "Wrongful Sentencing – Court hearing only 15 seconds long! Never had suppression hearing that I requested or appeal or a continuance."
 - d. "Appeal, continuance, suppression hearing, new counseling, fair trial – Judge was in a hurry! Never seen no court like it."³
4. Defendant's Motion for Postconviction Relief is controlled by the recently amended Superior Court Criminal Rule 61.⁴ Under Superior Court Criminal Rule 61(i), a Motion for Postconviction Relief can be potentially procedurally barred for time limitations, successive motions, procedural defaults, and former adjudications.⁵ Before addressing the merits of this Motion for Postconviction Relief, the Court must address any procedural requirements of Rule 61(i).⁶
5. Rule 61(i)(1) provides that a motion exceeds time limitations if it is filed more than one year after the conviction is finalized, or

¹ Sentence Order, Docket #12 (Feb. 13, 2007).

² See Docket #15, 18, and 20 (denying requests for modification of sentence).

³ Def.'s Mot. for Postconviction Relief at 3. This Court finds it reasonable to assume that by movant's use of the term "effective counseling," Defendant seeks to set forth a claim of ineffective assistance of counsel, and will treat the claim as such.

⁴ The most recent set of amendments to Super. Ct. Crim. R. 61 took effect on June 4, 2014.

⁵ Super. Ct. Crim R. 61(i)(1)-(4).

⁶ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

if the motion asserts a newly recognized, retroactively applied right more than one year after it is first recognized.⁷

6. Rule 61(i)(2) provides that a motion is successive if it is the second or subsequent motion made under this Rule, and such successive motions are prohibited unless the pleading requirements of 61(d)(2)(i) or (ii) are met.⁸
7. Rule 61(i)(3) bars consideration any ground for relief “not asserted in the proceedings leading to the judgment of conviction,” unless the movant can show “cause for relief from the procedural default” and “prejudice from violation of the movant’s rights.”⁹
8. Rule 61(i)(4) bars consideration of any ground for relief formerly adjudicated in the case, including “proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus hearing.”¹⁰
9. If any of the above procedural bars exist, the Court will not consider the merits of the claims unless the Defendant can show that the exception found in Rule 61(i)(5) applies.¹¹
10. Rule 61(i)(5), as recently amended, provides that consideration of otherwise procedurally barred claims is limited to claims that the Court lacked jurisdiction, or claims that satisfy the new pleading standards set forth in 61(d)(2)(i) and (ii).¹² The new pleading standards require that the Motion either:

- (i) Pleads with particularity that new evidence exists that creates a strong inference that the

⁷ Super. Ct. Crim. R. 61(i)(1).

⁸ Super. Ct. Crim. R. 61(i)(2). For further discussion of the pleading standards articulated in the newly amended Rule, see *infra*.

⁹ Super. Ct. Crim. R. 61(i)(3).

¹⁰ Super. Ct. Crim. R. 61(i)(4).

¹¹ Super. Ct. Crim. R. 61(i)(5).

¹² *Id.*

movant is actually innocent in fact of the acts underlying the charges of which he was convicted; or

- (ii) Pleads with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant's case and renders the conviction . . . invalid.¹³

11. This Court finds that all of Defendant's claims are time-barred pursuant to Rule 61(i)(1) as Defendant's motion was filed in 2014, substantially more than one year after Defendant's conviction was finalized.¹⁴ Defendant's conviction was finalized in 2007 when he pled guilty and was subsequently sentenced, placing his motion significantly outside the one year filing window set forth by Rule 61.
12. Having determined that all of Defendant's claims are time-barred, this Court further finds that Defendant fails to demonstrate, pursuant to 61(i)(5), that any of his claims are exempt from the procedural bars of 61(i).¹⁵ Specifically, Defendant does not articulate any factual basis to survive the pleading standards of 61(d)(2) as required by the Rule.¹⁶ As a result of Defendant's failure to meet the pleading standards referenced in 61(i)(5), this Court finds that Defendant is not entitled to relief.
13. Moreover, "[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be

¹³ Super Ct. Crim R. 61(d)(2)(i).

¹⁴ See Super. Ct. Crim. R. 61(i)(1) (barring postconviction motion filed more than one year after judgment of conviction is final).

¹⁵ See Super. Ct. Crim R. 61(i)(5) (requiring satisfaction of the pleading requirements in 61(d)(2)(i)-(ii) for review of an otherwise barred claim);

¹⁶ See Super. Ct. Crim. R. 61(i)(5) (referring to 61(d)(2)(i) and (ii) for requisite pleading standards).

notified.”¹⁷ A movant must support his or her assertions with ‘concrete allegations of actual prejudice, or risk summary dismissal.’”¹⁸ Sufficiently developed allegations are required in support of all grounds for relief, including claims of ineffective assistance of counsel.¹⁹ This Court “will not address Rule 61 claims that are conclusory and unsubstantiated.”²⁰

14. Procedural bars aside, it plainly appears from the Motion for Postconviction Relief that Defendant’s claims should be summarily dismissed. In Defendant’s Motion, he sets forth a bare-bones list of broad, conclusory statements with no underlying facts or law to support his claims. This Court declines to address Defendant’s Rule 61 claim, consistent with Rule 61(d)(5). Summary Dismissal is the appropriate disposition of Defendant’s Motion for Postconviction Relief.

Therefore, Defendant’s Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

cc: Prothonotary
Investigative Services

¹⁷ Super. Ct. Crim. R. 61(d)(5).

¹⁸ *State v. Chambers*, 2008 WL 4137988, at *1 (Del. Super. Aug. 25, 2008) (quoting *State v. Childress*, 2000 WL 1610766, at *1 (Del. Super. Sept. 19, 2000)).

¹⁹ *See, e.g., State v. Robbins*, 1996 WL 769219, at *1 (Del. Super. Dec. 18, 1996).

²⁰ *State v. Owens*, 2002 WL 234739, at *1 (Del. Super. Jan. 11, 2002).