

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID. No. 1006015765
)	
JAY M. RINGGOLD,)	
)	
Defendant.)	
)	

Submitted: April 24, 2015
Decided: June 2, 2015

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S SECOND MOTION FOR POSTCONVICTION
RELIEF SHOULD BE SUMMARILY DISMISSED.**

Mark A. Denney, Jr., Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Jay M. Ringgold, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se*.

PARKER, Commissioner

This 2nd day of June, 2015, upon consideration of Defendant's Second Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND AND PROCEDURAL HISTORY

1. On August 2, 2010, Defendant Jay M. Ringgold was indicted on one count of Possession of a Deadly Weapon by a Person Prohibited (hereinafter "PDWBPP").
2. The trial was continued once from December 2, 2010 to March 8, 2011, in order to allow DNA testing on the gun at issue to be performed.
3. The DNA Unit of the Office of Chief Medical Examiner ("OCME") performed DNA testing on the gun at issue and the results were inconclusive. Indeed, the conclusion was that: "No conclusion can be made in regards to Jay Ringgold . . . as a DNA contributor of the evidentiary sample. . . (gun swabs)."¹ Thus, the DNA test results were neither exculpatory nor harmful to the defense. Since the DNA results were inconclusive, Defendant's trial counsel filed a Motion in Limine to exclude any evidence of the OCME's testing and results at trial.²
4. The court granted Defendant's motion in limine to exclude any evidence of the OCME's testing and the DNA test results at trial.³
5. Defendant Ringgold was tried before a Superior Court judge on March 9, 2011. At the conclusion of the bench trial, the Superior Court convicted Defendant Ringgold of PDWBPP. On June 3, 2011, the Superior Court declared Defendant Ringgold a habitual offender and sentenced him to eight years, minimum mandatory, at Level V.
6. Defendant filed a direct appeal to the Delaware Supreme Court. On direct appeal, Defendant's counsel filed a brief and a motion to withdraw pursuant to Superior Court

¹ See, Superior Court Docket No. 12, Exhibit 1.

² Superior Court Docket No. 12.

³ See, Superior Court Docket No. 12, See also, Superior Court Docket No. 14.

Criminal Rule 26 (c). On direct appeal, Defendant raised several points in response to his appellate counsel's Rule 26(c) submission, including that he was denied the right to a speedy trial, the State withheld exculpatory evidence, and that he was convicted on the basis of insufficient evidence. On March 20, 2012, the Delaware Supreme Court found those claims to be without merit and affirmed the conviction and sentence of the Superior Court.⁴

7. On July 30, 2012, Defendant filed a *pro se* motion for postconviction relief and thereafter filed amendments to that motion. Defendant also filed a motion for the appointment of counsel. In that postconviction motion, Defendant raised a number of claims including ineffective assistance of counsel claims.

8. Before ruling on Defendant's first motion for postconviction relief, the record was enlarged and Defendant's trial counsel was directed to submit an Affidavit responding to Defendant's ineffective assistance of counsel claims. In turn, the State was directed to, and did, file a response to the postconviction motion.

9. After receipt of those submissions, the court appointed counsel to assist Defendant and directed Rule 61 counsel to file an amended postconviction motion. Defendant's Rule 61 counsel requested an extension of time to fully investigate and determine if there was any merit to Defendant's claims. The request for an extension was granted and Rule 61 counsel was directed to file an amended postconviction motion or, in the alternative, a motion to withdraw under (then) Superior Court Criminal Rule 61(e)(2).⁵

⁴ *Ringgold v. State*, 2012 WL 983199 (Del.).

⁵ Effective June 4, 2014, the motion to withdraw is set forth at Rule 61(e)(6) rather than at Rule 61(e)(2).

10. On November 1, 2013, Defendant's Rule 61 counsel filed a Rule 61(e)(2) motion to withdraw and supporting memorandum, representing that he had carefully reviewed the record and determined that the postconviction motion was without merit, and that the record did not suggest any other grounds for relief.

11. On February 10, 2014, after having fully, thoroughly and carefully reviewed and considered Defendant's claims, the Superior Court Commissioner issued her Report and Recommendation recommending that the motion to withdraw be granted and the postconviction motion be denied.⁶ By Order dated March 17, 2014, the Superior Court adopted the Commissioner's report and recommendation, granted counsel's motion to withdraw, and denied the postconviction motion.⁷

12. Defendant appealed the denial of his motion for postconviction relief to the Delaware Supreme Court. By Order dated October 17, 2014, the Delaware Supreme Court found Defendant's claims to be without merit and affirmed the Superior Court's denial of his motion for postconviction relief.⁸

13. On April 10, 2015, Defendant filed the subject motion for postconviction relief.

FACTS

14. The charge at issue stems from the following facts as set forth by the Delaware Supreme Court in its opinion on Defendant's direct appeal.⁹

15. While executing a search warrant on June 18, 2010 in a drug investigation, Wilmington police detectives discovered a 9 mm semi-automatic handgun and holster in the basement of 2913 N. Washington Street, Wilmington, Delaware. From their prior

⁶ *State v. Ringgold*, 2014 WL 605849 (Del.Super.).

⁷ *State v. Ringgold*, 2014 WL 1087160 (Del.Super.).

⁸ *Ringgold v. State*, 2014 WL 5315349 (Del.).

⁹ *Ringgold v. State*, 2012 WL 983199 (Del.).

surveillance of this residence, from identifying documents found in the storage box where the gun and holster were located, and from other evidence and observations, the police surmised that the gun and holster belonged to Defendant Ringgold. Defendant Ringgold was not present when the police executed the warrant.¹⁰

16. The other evidence and observations from which the police surmised that the gun and holster belonged to Defendant Ringgold included the fact that Ringgold's driver's license listed 2913 N. Washington Street as his residence. Ringgold's personal possessions were found in an upstairs bedroom. Ringgold provided the police with this address as his residence when he was arrested on July 13, 2010.¹¹

DEFENDANT'S SUBJECT RULE 61 MOTION

17. On April 10, 2015, Defendant filed a *pro se* motion for postconviction relief along with a supporting memorandum of law. In the subject motion, Defendant challenges his conviction in light of the 2014 investigation of the OCME. Defendant claims that because of the OCME "misconduct" that is under investigation the integrity of his conviction is at issue.

18. In second or subsequent postconviction motions, the motion shall be summarily dismissed unless the defendant pleads with particularity that new evidence exists that creates a strong inference that he is actually innocent of the charge for which he was convicted, or, pleads with particularity a claim that a new rule of law, made retroactive, applies to his case and renders his conviction invalid.¹² If it plainly appears from the

¹⁰ *Ringgold v. State*, 2012 WL 983199, at * 1 (Del.).

¹¹ *Ringgold v. State*, 2012 WL 983199, at *1 (Del.).

¹² Super.Ct.Crim.R. 61(d)(2).

motion for postconviction relief that the movant is not entitled to relief, the Court may enter an order for its summary dismissal and cause the movant to be notified.¹³

19. Defendant's subject motion, his second Rule 61 motion, should be summarily dismissed. Defendant does not plead with particularity that any new evidence exists that creates a strong inference that he is actually innocent of the charge for which he was convicted nor is there a new rule of law that would render his conviction invalid.

20. Defendant bases his Rule 61 motion on the allegations of misconduct of the OCME.

21. In February 2014, the Delaware State Police and the Department of Justice began an investigation into criminal misconduct occurring in the Controlled Substances Unit of the OCME. The investigation revealed that some drug evidence sent to the OCME for testing had been stolen by OCME employees in some cases and unaccounted for in other cases. There was no evidence to suggest that OCME employees "planted" evidence to wrongly obtain convictions. Nor was there evidence that the substances actually tested by the chemist were false.¹⁴

22. In the subject matter, it was the DNA Unit, not the Controlled Substances Unit, of the OCME that performed the DNA testing of the gun at issue. This case involved a gun not drugs. There has never been any allegation of misconduct of the unit of the OCME that performs DNA testing.

23. More importantly, in this case, the DNA testing performed by the DNA Unit of the OCME on the gun at issue yielded inconclusive results. The results were neither exculpatory nor harmful to the defense. Since the results were inconclusive, Defendant's

¹³ Super.Ct.Crim.R. 61(d)(5).

¹⁴ *Brown v. State*, 2015 WL 307389, *3 (Del.)

trial counsel filed a motion to have any evidence of the OCME's testing and results excluded at trial. That motion was granted. The OCME's testing and results were not used at trial.

24. The OCME had no involvement in Defendant's trial. There was no testimony at trial about the OCME's test results. The OCME, and the testing it performed on the gun at issue, had no bearing whatsoever on the case or on Defendant's conviction. The court convicted Defendant based on the evidence and testimony presented at trial. The OCME was not a factor at trial, no evidence or testimony was presented by the OCME, and the OCME did not contribute in any way to Defendant's conviction.

25. The DNA testing by the DNA Unit of the OCME was inconclusive, not used at trial, and had no bearing on Defendant's conviction. Defendant's Rule 61 motion is without merit.

26. Defendant's request for the appointment of counsel is hereby denied. Defendant was appointed counsel on his first Rule 61 motion. Rule 61, as amended effective June 4, 2014, provides that in second or subsequent postconviction motions, counsel may be appointed only in certain limited exceptional situations.¹⁵ Having fully, thoroughly and carefully considered Defendant's motion and the evidentiary record, none of the exceptional circumstances giving rise to the entitlement to the appointment of counsel exist in this case. Since Defendant has failed to overcome the procedural hurdles warranting the appointment of counsel, the appointment of counsel is denied.¹⁶

¹⁵ Superior Court Criminal Rule 61(e)(4).

¹⁶ See, Super.Ct.Crim.R. 61(e)(2).

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be summarily dismissed.

IT IS SO RECOMMENDED.

/s/
Commissioner Lynne M. Parker

oc: Prothonotary
cc: Dean C. DelCollo, Esquire