

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

STATE OF DELAWARE)	
)	
v.)	ID: 1206024952
)	
DWAYNE A. EVANS,)	
)	
Defendant.)	

ORDER

**Upon Defendant's Second Motion for Postconviction Relief –
*SUMMARILY DISMISSED.***

1. On June 24, 2013, Defendant pleaded guilty to murder in the second degree for stabbing his uncle in the heart a year earlier. On October 4, 2013, Defendant was sentenced to 25 years in prison, followed by probation. Defendant did not file a direct appeal from his guilty plea and sentence.

2. Instead, on June 26, 2014, Defendant filed a motion for postconviction relief. The motion was properly referred, but it was summarily dismissed on August 21, 2014.

3. Defendant's first motion for postconviction relief, filed *pro se*, made three claims: ineffective assistance of counsel; prosecutor's refusal to offer a better, reduced plea; and Defendant was overcharged. The summary dismissal order speaks for itself. Basically, it recounts the case's history, highlighting Defendant's written and oral assurances to the court that he was satisfied with his counsel's efforts, Defendant's admission of actual guilt, and the plea's benefits, even taking the eventual prison sentence into account.

4. Defendant did not file an appeal from the August 21, 2014 summary dismissal of his first motion for postconviction relief. On October 8, 2014, Defendant attempted another filing under Superior Court Criminal Rule 61, which was rejected for lack of signature and other deficiencies.

5. On November 18, 2014, Defendant filed a motion captioned "Defendant's Timely Motion to Amend Rule 61(i)(5)." As the December 8, 2014 order denying Defendant's motion explained, the motion was not "timely." The motion Defendant sought to amend had been summarily dismissed, and the time for appealing the dismissal had passed. It appeared then, as it appears now, that Defendant was either trying to make up for not having filed a timely appeal from the summary dismissal or attempting to file a procedurally barred, second motion for postconviction relief disguised as a motion to amend. The order denying the motion

to amend also denied appointment of counsel, seeing as Defendant's guilty plea was knowing, voluntary, and intelligent. And, he did not take a direct appeal.

6. Defendant took an appeal from the order denying the amendment of the previously dismissed motion for postconviction relief.

7. Defendant had captioned the rejected filing as a "motion to amend." The Supreme Court, accordingly, dismissed Defendant's appeal as interlocutory. The Supreme Court viewed the motion for what it was, an "attempt[] to file a second motion for postconviction relief"

8. On March 24, 2015, upon the mandate's receipt, the court wrote to Defendant explaining that the Supreme Court believed he was in the process of filing a second motion for postconviction relief. And so, this court gave Defendant leave to file that second motion, *pro se*. The court further provided:

You must understand that in order to avoid summary dismissal of your second motion for postconviction relief, you must show cause and prejudice for not having raised in your first motion for postconviction relief the claims you make in your second motion for postconviction relief.

9. Ultimately, on April 20, 2015, Defendant filed this, his second motion for postconviction relief, which was properly referred for preliminary review.¹

¹ Super. Ct. Crim. R. 61(d)(1).

10. Defendant's second motion for postconviction relief is literally and substantively difficult to understand. Basically, it seems Defendant is arguing that his first motion for postconviction relief should not have been summarily dismissed without appointment of counsel, or without his having had the opportunity to amend his first motion for postconviction relief more than a month after it had been summarily dismissed.

11. To the extent they are legible, Defendant makes four arguments, boiling down to overlapping ineffective assistance of counsel and actual innocence claims. The ineffective assistance of counsel claim argues that if counsel had done a better investigation, it would have shown that Defendant was innocent. Because counsel's investigation was ineffective, Defendant "took the guilty plea out of fear for [his] life" Next, recapitulating his original argument, Defendant's actual innocence claim is based on what Defendant perceives as a lack of incriminating evidence, as opposed to his actually being innocent. Finally, as to his claims, Defendant argues the State relied on hearsay rather than direct evidence that anyone saw Defendant stab the victim.

12. The second motion makes no discernable effort to explain-away Defendant's admissions or assurances during the guilty plea colloquy, much less to show cause and prejudice for his procedural defaults. This after the March 24, 2015

warning.

13. Defendant's second motion for postconviction relief is procedurally barred. The court accepts that Defendant's first and second motions for postconviction relief were timely. Nevertheless, Defendant's second motion reargues points that were decided against him in his first motion. To the extent that Defendant has expanded or rewritten those claims, they are still previously adjudicated. To the extent Defendant has offered new claims, perhaps his actual innocence claim is new, he was obligated to have raised that in his first motion.²

14. To the limited extent it can be said that Defendant has made new claims, it cannot be said that he has shown cause or prejudice rendering the procedural bars inapplicable. Moreover, as explained next, Defendant has not supported a finding of miscarriage of justice justifying further review.

15. As the dismissal of Defendant's first motion for postconviction relief explains, Defendant's recent protestations of innocence are refuted by what he said to the court when he asked it to accept his guilty plea. Then, as explained before, Defendant assured the court that he was "in fact" guilty. Similarly, Defendant had no complaints about his lawyer's efforts. Moreover, Defendant repeatedly assured the

² See Super. Ct. Crim. R. 61(d)(2)(i): "A second or subsequent motion under this rule shall be summarily dismissed, unless the movant . . . pleads with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact"

court, orally and in writing, that his plea was not coerced and that he was not entering the plea out of fear. When Defendant pleaded guilty, if he was afraid of anything, it was probably that a jury was about to find him guilty not only of murder, but also several weapons offenses that would have added many years of minimum/mandatory prison to the sentence he received for the murder. Accordingly, the court sees no injustice in Defendant's guilty plea.

For the foregoing reasons, after preliminary review of the record, Defendant's second motion for postconviction relief is procedurally barred, and it is **SUMMARILY DISMISSED**. The Prothonotary **SHALL** notify Defendant.

IT IS SO ORDERED.

Date: June 9, 2015 /s/ Fred S. Silverman
Judge

oc: Prothonotary (Criminal)
pc: Andrew J. Vella, Deputy Attorney General
Elizabeth R. McFarlan, Deputy Attorney General
Dwayne A. Evans, *pro se*, Defendant