

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY
COURTHOUSE
GEORGETOWN, DE 19947

May 25, 2006

Thomas A. Morgan
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19971

RE: State v. Morgan, Def. ID# 92S05729DI

Date Submitted: March 20, 2006

Dear Mr. Morgan:

On March 14, 2006, you filed your fourth motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61").¹

In August, 1993, a jury found you guilty of charges of unlawful sexual intercourse in the first degree (2 counts), unlawful sexual contact in the second degree, and kidnapping in the second degree. You appealed to the Supreme Court, and that Court affirmed the judgment of the Superior Court. Morgan v. State, Del. Supr., No. 386, 1993, Moore, J. (May 5, 1994). Your conviction was final for purposes of Superior Court Criminal Rule 61 on May 23, 1994, when the

¹You filed a motion on September 19, 2005, and labeled it as a Motion for Postconviction Relief. It was, however, a motion for new trial pursuant to Superior Court Criminal Rule 33, and the Court treated it as such. State v. Morgan, Del. Super., Def. ID# 92S05729DI, Stokes, J. (Dec. 7, 2005).

Supreme Court issued its mandate. Super. Ct. Crim. Rule 61(m).²

The version of Superior Court Criminal Rule 61(i) applicable to your case provides as follows:

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 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.

The claims you advance in your currently pending motion are procedurally barred on multiple grounds. First, they are time-barred. In addition to being time-barred, the various claims

²In Super. Ct. Crim. R. 61(m), it is provided in pertinent part:

(m) *Definition.* A judgment of conviction is final for the purpose of this rule as follows:

(2) If the defendant files a direct appeal ..., when the Supreme Court issues a mandate or order finally determining the case on direct review....

also are barred either because they previously were asserted in the proceedings leading to the judgment of conviction, Super. Ct. Crim. R. 61(i)(3), or they have been formerly adjudicated, Super. Ct. Crim. R. 61(i)(4). In order to overcome the procedural bars, you must show that exceptions to the bars exist. You have recognized this requirement because you set forth the general law regarding the exceptions to the bars. What you do not do, however, is establish which exception(s) apply(ies) to which claims and how they overcome the procedural bars. Merely stating the law regarding the exceptions, which is all you have done, is not sufficient.

Because you do not establish that any exceptions to the procedural bars exist, your pending motion is denied as procedurally barred.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
James Adkins, Esquire
Thomas Barnett, Esquire
Public Defender's Office