

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

STATE OF DELAWARE,                    )  
  )  
  )    ID No. 00100569R2  
  )                    00100552R2  
  )  
v.    )  
  )  
WILLIAM A. PARISI,                    )  
  )  
  )  
  )    Defendant.

Submitted: March 29, 2006  
Decided: May 22, 2005

**ORDER**

*Upon Defendant's Motion for Postconviction Relief*

**DENIED**

Upon review of Movant William A. Parisi's ("Defendant") Motion for Postconviction Relief and the record, it appears to the Court that:

1. On March 26, 2002, Defendant pled guilty to two counts of Burglary Second Degree. Defendant was sentenced as an habitual offender to two consecutive eight-year terms at Level V, plus one year at Level III probation.
2. Defendant previously filed a motion for postconviction relief on July 17, 2002. The motion was denied by this Court on October 29, 2002 and affirmed on appeal by the Delaware Supreme Court on May 5, 2003.

3. Defendant's current motion for postconviction relief was filed on March 29, 2006. In support of his motion, Defendant alleges that his guilty plea was involuntary.

4. In evaluating a motion for postconviction relief, the Court first must ascertain whether any procedural bars of Superior Court Criminal Rule 61(i) are applicable.<sup>1</sup> If a procedural bar is found to exist, the Court should refrain from considering the merits of the individual claims. This Court will not address claims for postconviction relief that are conclusory and unsubstantiated.<sup>2</sup> Pursuant to Rule 61(a), a motion for postconviction relief must be based on "a sufficient factual and legal basis." "The motion shall specify all the grounds for relief which are available to movant..., and shall set forth in summary form the facts supporting each of the grounds thus specified."<sup>3</sup> Any ground for relief that was formerly adjudicated, whether in a proceeding leading to a judgment of conviction, in an appeal, or in a postconviction proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.<sup>4</sup>

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<sup>1</sup>See *Younger v. State*, 580 A.2d 552, 554 (Del. 1990); Super. Ct. Cr. R. 61(i).

<sup>2</sup>See *Younger*, 580 A.2d at 555; *State v. Conlow*, Del. Super., Cr. A. No. IN78-09-0985R1, Herlihy, J. (Oct. 5, 1990) at 5; *State v. Gallo*, Del. Super., Cr. A. No. IN87-03-0589-0594, Gebelein, J. (Sept. 2, 1988) at 10.

<sup>3</sup>Super. Ct. Cr. R. 61(b)(2).

<sup>4</sup>Super. Ct. Cr. R. 61(i)(4).

5. Defendant previously filed a motion for postconviction relief.

Defendant's prior motion specifically raised the issue of the validity of his guilty plea on the grounds that the Defendant's actions do not constitute the crime of burglary. Defendant's claims in this motion are virtually identical:

The defendant's actions did not constitute the crime of Burglary in the Second Degree and the elements of the crime do not exist to support a conviction of the offense. At no time was the defendant ever informed of what exactly he was pleading guilty to. Had the defendant been informed that he was pleading guilty to two counts of Burglary in the Second Degree for these two incidents, the defendant would not have pled guilty. The defendant now moves to vacate his plea agreement.

Therefore, the procedural bar of Rule 61(i)(4) bars Defendant's ground for this particular relief in this second motion.

6. Further, Rule 61(i)(1) provides that the motion may not be filed more than one year after judgment of conviction is final or one year after a newly-discovered, retroactively applicable right is recognized by the United States Supreme Court or the Delaware Supreme Court. Because Defendant's judgment of conviction was final over five years ago, unless a newly-discovered, retroactively applicable right was recognized by the United States Supreme Court or the Delaware Supreme Court within the past year, Defendant's motion is procedurally barred by Rule 61(i)(1).

7. The interest of justice exception to the procedural bars, upon which Defendant might be relying, is narrowly construed, and not applicable. To trigger this exception, “movant must show that subsequent legal developments have revealed that the trial court lacked authority to convict or punish him.”<sup>5</sup>

8. Defendant has failed to allege any subsequent legal development. Defendant’s Motion for Postconviction Relief must be denied as it is procedurally barred pursuant to Superior Court Criminal Rules 61(i)(1) and (4). To protect the integrity of the procedural rules, the Court will not consider the merits of the postconviction claims where a procedural bar exists.<sup>6</sup>

**THEREFORE**, Defendant’s Motion for Postconviction Relief is hereby **DENIED**.

**IT IS SO ORDERED.**

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The Honorable Mary M. Johnston

oc: Prothonotary - Criminal Division

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<sup>5</sup>*Flamer v. State*, 585 A.2d 736, 746 (Del. 1994).

<sup>6</sup>*State v. Gattis*, Del. Super., Cr. A. No. IN90-04-1017, Barron, J. (Dec. 28, 1995)(citing *Younger v. State*, 580 A.2d at 554); *Saunders v. State*, Del. Supr., No. 185, 1994, Walsh, J. (Jan. 13, 1995)(ORDER); *Hicks v. State*, No. 417, 1991, Walsh, Jr. (May 5, 1992)(ORDER).