

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

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

May 30, 2006

N440 - State Mail
Charles D. Jurbala

Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: Defendant ID No. 0103019845

Dear Mr. Jurbala:

The Court is in receipt of your Motion for Postconviction Relief. I have studied same and I have reviewed your file. It is denied.

On September 5, 2001, you entered a guilty plea to escape after conviction, receiving stolen property (felony), and conspiracy. As to the escape charge, you received a sentence of 5 years, after serving 6 months the balance was suspended for Level 3 probation. As to receiving stolen property and conspiracy charge, you received Level 5 incarceration, suspended for probation.

On September 2, 2004, your probation was violated and you were sentenced to 4-1/2 years under 11 Del. C. §4204(k) for the escape charge. As to both the receiving stolen property charge and the conspiracy charge, you received a suspended sentence.

On November 12, 2004, you filed a Motion for Modification of Sentence which was denied.

Approximately a year later on October 10, 2005, you filed a Motion for Modification of Sentence which was also denied.

On December 2, 2005, you filed a Motion for Illegal Sentence which was denied. You alleged that your sentence was illegal because the Court applied 11 Del. C. §4204(k) to the balance of the sentence that was remaining on your escape sentence. In other words, you were initially sentenced to a period of 5 years, suspended after serving 6 months. When you violated your probation, the Court imposed the balance available, i.e. the 4-1/2 years, and placed the conditions of 11 Del. C. §4204(k) on that sentence.

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You filed an appeal of this Court's ruling to the Delaware Supreme Court but abandoned it by not diligently prosecuting your appeal. Your appeal was dismissed by Order of the Supreme Court on April 28, 2006.

In your current Motion for Postconviction Relief, you raise several grounds.

In Ground One, you advise that the Court failed to inform you of your right to appeal the imposition of your sentence. This claim is frivolous, not only on legal grounds but on the facts of your case. In your guilty plea, you were informed that you were waiving your right to an appeal at the time you entered the guilty plea. On the violation of probation, you, in fact, appealed this Court's ruling. This claim is dismissed.

In Ground Two, you allege that there was false testimony resulting in your violation of probation on September 2, 2004. This ground is procedurally denied under Superior Court Criminal Rule 61(i)(3). Following this Court's determination that you were in violation of probation, you had the opportunity to appeal to the Delaware Supreme Court. In same, you had the opportunity to present to the Supreme Court whether or not the evidence was sufficient for you to be held in violation of probation. You appealed, but then abandoned it. You have not established any relief from the procedural bar by explaining your cause for failing to pursue this issue in your appeal. Nor have you attempted to address the Rule's second prong, that being prejudice. Therefore, this claim is dismissed as being procedurally barred under Rule 61(i)(3) due to your failure to prosecute your appeal.

In Ground Three, you allege that the Court violated your double jeopardy rights when it applied 11 Del. C. §4204(k) to the violation of probation sentence. This ground is procedurally barred because it has been previously adjudicated with an appeal that was subsequently abandoned. See Superior Court Criminal Rule 61(i)(4). You cannot litigate an issue under Superior Court Rule 35, get an adverse decision, appeal same, abandon it, and then expect the Court to revisit it under a subsequent Rule 61 application. Ground Three is dismissed.

In Ground Four, you make the following allegation: "Plain Error for Court to deny Movant Constitutional guarantee to present evidence on His behalf and the opportunity to question adverse witnesses is a fundamental 'miscarriage of justice' ". I am unsure exactly what you are alleging in this Ground but I am satisfied it is procedurally barred. This complaint arises directly from the proceedings that took place on September 2, 2004. Again, you appealed the findings of the Court which held you in violation of probation and therefore had the opportunity to present this issue to the Delaware Supreme Court. You abandoned that appeal. Therefore, the matter is procedurally barred under Superior Court Criminal Rule 61(i)(3) in that you have not shown cause for your failure to prosecute your appeal and present this issue to the Supreme Court. Nor have you shown prejudice.

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Defendant's Motion for Postconviction Relief is denied.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary
Department of Justice