

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

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

May 8, 2006

N440 - State Mail
Mr. William Downes, Jr.

Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: Defendant ID No. 9408020702

Dear Mr. Downes:

The Court has considered your second Motion for Postconviction Relief. It is denied.

BACKGROUND

Following a jury trial in which you were represented by John S. Malik, Esquire, you were convicted of attempted murder in the first degree, assault in the first degree, possession of a firearm during the commission of a felony, burglary in the first degree, reckless endangering in the first degree, and a second possession of a firearm during the commission of a felony. On March 24, 1995, you received a life sentence. The Supreme Court affirmed your conviction. *Downes v. State*, Del. Supr., No. 151, 1995, Hartnett, J. (March 13, 1996) (ORDER).

On March 10, 1999, you filed your first Motion for Postconviction Relief. Your Motion for Postconviction Relief was denied. *Downes v. State*, 1999 WL 743629 (Del. Super.). The decision was affirmed by the Delaware Supreme Court. *Downes v. State*, 771 A.2d 289 (Del. 2001).

In the present Motion, you make an argument based on newly discovered evidence.

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You recognize this claim is time barred under Superior Court Criminal Rule 33, as it's been ten (10) years since your direct appeal was denied.¹

You also recognize you are procedurally barred under Superior Court Criminal Rule 61(i)(1) for the following reasons: (a) it has been more than three years from your conviction; and (b) this is your second Motion and you are supposed to bring all your grounds in your first application. Rule 61(i)(2).

You also acknowledge that Rule 61 allows for a waiver of the procedural bar in certain circumstances under Rule 61(i)(5) but you admit that you don't fall into Rule 61(i)(5). Therefore, you ask the Court to follow federal statutes and procedures in order to litigate your claim by allowing you one year from when you "discovered" the new evidence. I decline your invitation to apply federal law and procedure to a state postconviction application.

You are barred due to the time bars of Rule 33 and Rule 61(i)(1) as well as the procedural bar of Rule 61(i)(2).

Even without the procedural bars, your claim fails. You allege that your newly discovered evidence is that Judge William S. Lee and I had a personal relationship with one of the victims (Amy Royal) and each of us should have recused ourselves. You allege personal ties to the "Royal Family" form a basis to establish actual prejudice. You allege Judge Lee presided over the post-trial Motion for Judgment of Acquittal. To support your position, you attach two affidavits.

In the affidavit of Graylin Hall, he alleges that "prior to 2001", he "worked the door at the Irish Eyes Bar in Rehoboth . . . owned and operated by the Royal Family . . .". Further, he alleges that he would "often" see Judge Lee and "periodically" see J. Graves as customers. He then alleges some observations about Judge Lee. Then he makes the conclusory statement that it is his "belief"

¹In affirming this Court in your appeal of the Postconviction Motion, the Supreme Court noted that the three year limitation period of Rule 61 would control your claim on newly discovered evidence. The ruling on the Motion was affirmed on the merits as opposed to being time-barred because although it was filed after two years (Rule 33), it was filed before three years (Rule 61) from the return of the mandate.

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that "area judges" have a long-standing friendship with the "Royal Family". I note that Graylin Hall is currently serving a sentence of life imprisonment as a habitual offender. I was the Judge that imposed this non-discretionary sentence.

The second affidavit is signed by the Defendant. This affidavit is important as you try to pull Judge Lee into the case as being the Judge who denied your post-trial Motion for Judgment of Acquittal. This affidavit states Judge Lee presided in your case on March 10, 1995 on this Motion. The affidavit is to support that Judge Lee was involved in your case and apparently that Judge Lee and I conspired in seeing that you were convicted.

You are just plain factually mistaken. The judge that presides over the trial is the judge that hears any post-trial motion concerning the insufficiency of the evidence, i.e., the Motion for Acquittal. The transcript, the docket, and the Prothonotary Clerk's handwritten notes on the judicial action form all evidence that I was the Judge that denied the post-trial Motion for Acquittal.

Defendant's Motion for Postconviction Relief is procedurally barred under Rule 33 and Rule 61(i). It is also dismissed because your allegations are both conclusory and based on mistakes as shown by the record.

Defendant's Second Motion for Post-Conviction Relief is denied.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary
James W. Adkins, Esquire