

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
	)	I.D. No. 0504012182
v.	)	
	)	
Andre L. Brodie	)	
	)	
Defendant	)	

Submitted: November 18, 2013

Decided: February 11, 2014

On Defendant's Motion for Postconviction Relief.

SUMMARILY DISMISSED.

ORDER

Brian J. Robertson, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Andre L. Brodie, Smyrna, Delaware, *pro se*.

COOCH, R.J.

This 11th day of February 2014, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. Defendant Andre Brodie ("Defendant") was convicted on September 21, 2007 of charges of First Degree Kidnapping, Second Degree Kidnapping, two counts of First Degree Robbery, Second Degree Burglary, Second Degree Assault, Using a Disguise During the Commission of a Crime, Second Degree Conspiracy, and six counts of Possession of a Firearm

During the Commission of a Felony.¹ He was sentenced to thirty-three years Level V incarceration, suspended after twenty-seven years for decreasing levels of supervision.² Defendant appealed his conviction to the Supreme Court and it was affirmed.³

2. Defendant's first Motion for Postconviction Relief was filed in July 2009.⁴ A Commissioner reviewed Defendant's motion and recommended denial, which was later adopted by this Court⁵ and affirmed on appeal to the Supreme Court.⁶
3. Defendant filed a Motion for Appointment of Counsel on August 12, 2013, alleging that under new Delaware Rule of Criminal Procedure 61(e) (1),⁷ he was entitled to counsel.⁸ This Court **DENIED** Defendant's Motion on September 30, 2013, stating that it would not appoint counsel for a second Postconviction Relief Motion that had yet to be filed, and would consider the request "when and if such motion is filed."⁹
4. Defendant filed this Second Motion for Postconviction Relief on November 7, 2013.¹⁰ He again requests appointment of counsel.
5. Defendant's Motion proffers merely conclusory allegations in support of his claims and provides no further supplementation.

¹For additional facts not relative to the Motion before this Court see *Brodie v. State*, 16 A.3d 937, 2011 WL 927673 (Del. Mar. 17, 2011) (ORDER).

² *Id.* at *1.

³ *Brodie v. State*, 966 A.2d 347, 2009 WL 188855 (Del. Jan. 26, 2009) (Defendant claimed on appeal this Court abused its discretion when it denied his motion in limine to exclude DNA evidence and a subsequent continuance to provide the defense additional time to prepare deprived him of his right to a speedy trial).

⁴ *Brodie*, 2011 WL 927673, at *1.

⁵ *Id.* at *1.

⁶ *Id.* at *3.

⁷"The court will appoint counsel for an indigent movant's first postconviction proceeding. For an indigent movant's second or subsequent postconviction proceedings, the court will appoint counsel only in the exercise of discretion and for good cause shown, but not otherwise. Unless the judge appoints counsel for a limited purpose, it shall be the duty of counsel to assist the movant in presenting any substantial ground for relief available to the movant."

⁸ Def.'s Mot. for Appointment of Counsel at 2.

⁹ *State v. Brodie*, I.D. No. 0504012182; Trans. ID 96 (Del. Super. Sept. 11, 2013) (ORDER).

¹⁰ Def.'s Mot. for Postconviction Relief.

Defendant's arguments in support of his three claimed grounds for relief, in addition to his request for counsel, are set forth, *in toto*:

Ground One: DENIAL OF THE RIGHT TO FACE HIS ACCUSER

ACCUSER WAS NOT IN COURT AND THERE WAS NO OBJECTION AS TO THE CONSTITUTIONAL VIOLATION OF THE RIGHT TO FACE ONE'S ACCUSER

Ground Two: INEFFECTIVENESS – OF – COUNSEL – AT - TRIAL

NONE SUFFICIENCY OF EVIDENCE AND THE FAILURE TO PROTECT A GIVEN RIGHT OF AN ACCUSED TO FACE HIS ACCUSER.

Ground Three: INEFFECTIVENESS OF COUNSEL DURING PLEA NEGOTIATIONS

THE STATE OFFERED A 7 YEAR DEAL AND DEFENDANT WANTED TO MAKE A COUNTER OFFER OF 5 YEARS BUT COUNSEL FAILED TO DO AS DEFENDANT WISHED AND DID NOT PRESENT THIS OFFER TO THE STATE.¹¹

6. “If it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified.”¹² “A movant must support his or her assertions with ‘concrete allegations of actual prejudice, or risk summary dismissal.’”¹³ This Court “will not address Rule 61 claims that are conclusory and unsubstantiated.”¹⁴ Sufficiently developed allegations are required in support of all grounds for relief, including claims of ineffective assistance of counsel.¹⁵ The word “conclusory” has

¹¹ Def.'s Mot. at 4.

¹² Super. Ct. Crim. R. 61(d)(4).

¹³ *State v. Chambers*, 2008 WL 4137988, at *1 (Del. Super. Aug. 25, 2008) (quoting *State v. Childress*, 2000 WL 1610766, at *1 (Del. Super. Sept. 19, 2000)).

¹⁴ *State v. Owens*, 2002 WL 234739, at *1 (Del. Super. Jan. 11, 2002).

¹⁵ See, e.g., *State v. Robbins*, 1996 WL 769219, at *1 (Del. Super. Dec. 18, 1996).

been defined as, “[e]xpressing a factual inference without stating underlying facts on which the inference is based.”¹⁶

7. While Rule 61(e) (1) provides this Court with authority to appoint counsel to a defendant who has moved for postconviction relief, that discretion is not a constitutional right and therefore it cannot be applied retroactively.¹⁷ Due to the fact that Defendant’s first Motion for Postconviction Relief, filed in 2010, predates the effective date of new Rule 61(e) (1) his Motion for Appointment of Counsel is **DENIED**.
8. It also plainly appears from the most recent Motion for Postconviction Relief that Defendant’s claims should be summarily dismissed. In Defendant’s Motion, he asserts a bare-bones list of broad, conclusory statements with no underlying facts or law which provide any basis for the asserted inferences. Therefore, this Court “will not address” his Rule 61 claim. Summary Dismissal is the appropriate result for Defendant’s Motion for Postconviction Relief.

Therefore, Defendant’s Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

oc: Prothonotary
cc: Investigative Services

¹⁶ Black’s Law Dictionary, (9th ed. 2009).

¹⁷ See *State v. Desmond*, 2013 WL 1090965, at *3 (Del. Super. Feb. 26, 2013). See also *State v. Travis*, 2013 WL 1196332 (Del. Super. Mar. 25, 2013), *aff’d sub nom.*, *Anderson v. State*, 69 A.3d 370 (Del. 2013) and *aff’d*, 69 A.3d 372 (Del. 2013).