

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

STATE OF DELAWARE,)	
)	
Plaintiff,)	
v.)	
)	
Gerron Lindsey,)	Cr. ID. No. 0002019767
)	
Defendant.)	
)	

Submitted: August 26, 2015
Decided: September 10, 2015

Upon Commissioner’s Report and Recommendation that Defendant’s Tenth *Pro Se*
Motion for Postconviction Relief should be Denied.

ADOPTED

ORDER

This 10th day of September, 2015, the Court has considered the Commissioner’s Report and Recommendation.

On August 4th, 2015, Defendant Gerron Lindsey filed his tenth *pro se* Motion for Postconviction Relief. The motion was referred to a Superior Court Commissioner in accordance with 10 *Del. C.* § 512(b) and Superior Court Criminal Rule 62 for proposed findings of fact and conclusions of law.

The Commissioner issued the Report and Recommendation on August 10, 2015. The Commissioner recommended that Defendant's Motion for Postconviction Relief be denied.

The Commissioner also found: "Defendant's abuse of the system by filing repetitive and meritless motions continues, despite the Court's order that the Prothonotary prohibit such motions in the future without Court approval."¹

"Within ten days after filing of a Commissioner's proposed findings of fact and recommendations . . . any party may serve and file written objections."² On August 26, 2015, following a 20 day extension of time to file an appeal to the Commissioner's Report and Recommendation, Defendant filed objections. The Court need not address the merits of Defendant's pending claims because Defendant has failed to overcome the procedural requirements of Superior Court Criminal Rule 61.³ On August 27, 2015, the Court found that Defendant's objections were untimely.

However, if the Court were to consider Defendant's objections, it finds that Defendant has failed to assert any meritorious grounds for relief. As to Defendant's first objection, Defendant fails to show how the Commissioner's misunderstanding of Defendant's purpose for filing the Writ of Mandamus as well

¹ Comm'r Rep., Findings of Fact and Recommendations at ¶ 4.

² Super. Ct. Crim. R. 62(a)(5)(ii).

³ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991) (stating the court must first apply the procedural bar under Rule 61 before considering the merit of any claim); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) (same).

as its decision affects his Motion for Postconviction Relief. As to Defendant's second objection, Defendant fails to support his claim with any legal argument. As to Defendant's last objection, the Court finds that it does not satisfy Rule 61's interest of justice exception.⁴ Defendant argues that the decision in *Shah v. Coupe*⁵ requires the Court to re-evaluate the claim that formerly was adjudicated. The argument lacks merit as Defendant pleads nothing new in this Rule 61 Motion. At best, Defendant has restated or refined the same claim that he made in previous Rule 61 Motions. The Court finds that it need not re-evaluate restated or refined claims.⁶

The Court holds that the Commissioner's Report and Recommendation dated August 3, 2015 should be adopted for the reasons set forth therein. The Commissioner's findings are not clearly erroneous, are not contrary to law, and are not an abuse of discretion.⁷

THEREFORE, after careful and *de novo* review of the record in this action, the Court hereby accepts the Commissioner's Report and Recommendation in its entirety. Defendant's Motion for Postconviction Relief is hereby **DENIED**.

⁴ *Lindsey v. State*, 83 A.3d 738 (Del.) *cert. denied*, 134 S. Ct. 2693, 189 L. Ed. 2d 223 (2014) (The "interest of justice exception is narrow and will only be applied in limited circumstances.")

⁵ 2014 WL 5712617 (Del. Super.).

⁶ *Johnson v. State*, 1992 WL 183069, at *1 (Del.).

⁷ Super. Ct. Crim. R. 62(a)(4)(iv).

**DEFENDANT IS PROHIBITED FROM FILING ANY FURTHER
MOTIONS FOR POSTCONVICTION RELIEF UNLESS THE MOTION IS
APPROVED BY THE COURT.**

IT IS SO ORDERED.

/s/ Mary M. Johnston _____

The Honorable Mary M. Johnston