

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cr. ID. No. 0801037592
	)	
ALFRED V. FINN,	)	
	)	
Defendant.	)	

Submitted: February 20, 2012  
Decided: May 23, 2012

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT  
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF  
SHOULD BE DENIED.**

Kathleen Vavala, Deputy Attorney General, Department of Justice, Wilmington,  
Delaware, Attorney for the State.

Alfred V. Finn, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se*.

PARKER, Commissioner

This 23rd day of May, 2012, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. On March 17, 2008, the New Castle County grand jury indicted Defendant Alfred V. Finn stemming from events that occurred on January 30, 2008.
2. Defendant waived his right to a jury trial.<sup>1</sup> A non-jury trial was held on September 9 and 10, 2008. Following the trial, on September 10, 2008, the Superior Court judge found Defendant Finn guilty on all three charges: Carjacking First Degree, Possession of a Deadly Weapon During the Commission of a Felony, and Assault Second Degree.
3. On December 4, 2008, the State filed a motion to have Defendant declared a habitual offender.<sup>2</sup> The motion was granted and Defendant was declared a habitual criminal offender under the provisions of 11 *Del. C.* § 4214(a).<sup>3</sup>
4. On January 30, 2009, Defendant was sentenced, after a presentence investigation, to eight years at Level V on the charge of Assault Second Degree. Defendant was sentenced pursuant to 11 *Del. C.* § 4214(a) on this charge. On the Carjacking First Degree charge, Defendant was sentenced to 10 years at Level V, suspended after 2 years, followed by decreasing levels of probation. On the charge of Possession of a Deadly Weapon During the Commission of a Felony, Defendant was sentenced to two years at Level V. Consequently, Defendant was sentenced to a total of twenty years at Level V suspended after twelve years, followed by decreasing levels of probation.
5. Defendant filed an untimely notice to appeal. Because it was unclear whether Defendant had ever been timely advised of his right to appeal, on June 3, 2009, the

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<sup>1</sup> See, Superior Court Docket No. 15; September 9, 2012 Trial Transcript, pgs. 3-6.

<sup>2</sup> Superior Court Docket No. 19.

<sup>3</sup> Superior Court Docket No. 21.

Delaware Supreme Court remanded the matter to the Superior Court for vacation and reimposition of his sentence so that Defendant could appeal.<sup>4</sup> On July 2, 2009, Defendant was resentenced pursuant to the Delaware Supreme Court Order.

6. Thereafter, Defendant filed a notice of appeal. Defendant's appellate counsel requested an extension of time to file a motion to withdraw and an accompanying brief pursuant to Supreme Court Rule 26(c). On February 2, 2010, Defendant sought to discharge his counsel and proceed with his appeal *pro se*. The Delaware Supreme Court remanded this matter to the Superior Court to conduct an evidentiary hearing to determine whether Defendant's request to pursue his appeal *pro se* was made knowingly and voluntarily.<sup>5</sup>

7. On February 5, 2010, the Superior Court conducted an evidentiary hearing. During the hearing, Defendant advised that his decision to discharge his counsel and proceed *pro se* was prompted by his belief that his chances for success on appeal were enhanced if there was no Rule 26(c) brief in the appellate record.<sup>6</sup> By Order dated March 8, 2010, the Superior Court determined that Defendant's waiver of his constitutional right to counsel on the appeal was knowing, intelligent and voluntary and granted his request to discharge his counsel and proceed *pro se*.<sup>7</sup>

8. Defendant never filed his opening brief and appendix by the deadline set by the Delaware Supreme Court and thereafter failed to respond to the Delaware Supreme Court's notice to show cause why he had failed to do so. By Order dated July 1, 2010,

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<sup>4</sup> *Finn v. State*, 2009 WL 1539034 (Del.).

<sup>5</sup> *Finn v. State*, No. 435, 2009, Order of February 3, 2010 (Del. 2010).

<sup>6</sup> Superior Court Docket No. 39, at \*3.

<sup>7</sup> Superior Court Docket No. 39.

the Delaware Supreme Court dismissed Defendant's appeal for his failure to pursue his direct appeal.<sup>8</sup>

## **FACTS**

9. The criminal charges arose from events that occurred on January 30, 2008. On January 30, 2008, at about 4:15 p.m., Jordyn Mattei and her then boyfriend, now husband, Christopher Pusey, stopped at the Exxon Gas Station located at the intersection of Route 41 and Kirkwood Highway. Mr. Pusey was driving the vehicle which was owned by Ms. Mattei, a 2008 black BMW.<sup>9</sup> Mr. Pusey parked at the entrance of the Exxon gas station store, and left the car running and the keys in the ignition, while he ran into the store to purchase cigarettes and gum.<sup>10</sup> His girlfriend, Jordyn Mattei, remained sitting in the car in the passenger side.<sup>11</sup>

10. After Mr. Pusey had gone into the Exxon gas station store, Jordyn Mattei noticed that a friend of hers, Tristan Spates, was also at the gas station getting gas. Jordyn Mattei got out of the car to talk with her friend. The car was still running.<sup>12</sup> During the conversation, her friend, Tristan Spates saw a man looking into and then opening the door and getting inside Jordyn Mattei's car.<sup>13</sup> Tristan Spates yelled that somebody was stealing Jordyn's car.<sup>14</sup> The victim, Jordyn Mattei turned and saw a man get into her car.<sup>15</sup> Jordyn Mattei started yelling at the man to get out of the car.<sup>16</sup> Jordyn Mattei went around to the front of the car and, at a distance of about four to five feet, eyeball to

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<sup>8</sup> *Finn v. State*, 2010 WL 2635087 (Del.).

<sup>9</sup> September 9, 2008 Trial Transcript, pgs. 26-28.

<sup>10</sup> September 9, 2008 Trial Transcript, pgs. 107,112-114.

<sup>11</sup> September 9, 2008 Trial Transcript, pgs. 28-30.

<sup>12</sup> September 9, 2008 Trial Transcript, pgs. 29-31.

<sup>13</sup> September 9, 2008 Trial Transcript, pgs. 82-85.

<sup>14</sup> September 9, 2008 Trial Transcript, pgs. 83-85.

<sup>15</sup> September 9, 2008 Trial Transcript, pg. 32.

<sup>16</sup> September 9, 2008 Trial Transcript, pgs. 58, 84-85.

eyeball, was looking at the man and screaming at him to get out of her car. She looked through the windshield and could clearly see him. He looked her in the eyes, revved the engine and floored it proceeding forward striking her with the vehicle.<sup>17</sup> Jordyn Mattei was thrown up on the hood of the car and forced to the side, she tried to hold on to the passenger side mirror, but fell on the concrete and landed on her face.<sup>18</sup>

11. Mr. Christopher Pusey was inside the store when he heard a lot of yelling and screaming.<sup>19</sup> He came out of the store, saw his girlfriend on the ground, and saw the car at a high rate of speed go out of the parking lot and onto the highway.<sup>20</sup> He ran onto Kirkwood highway, flagged someone down and took up pursuit of the stolen car.<sup>21</sup>

12. Coincidentally, Captain Anthony Goode of the Wilmington Fire Department and three other firefighters happened to be driving down the road at the time this offense occurred. They were driving a Ford Expedition, SUV, labeled and marked “City of Wilmington”, equipped with emergency lights.<sup>22</sup> The four firefighters had been to a physical evaluation and were on their way back from Newark to Wilmington.<sup>23</sup> At around 4:15 p.m., on January 30, 2008, they just happened to be approaching the Exxon gas station on Kirkwood Highway when they saw a female being struck by a black BMW and land on the ground, a person running out of the gas station onto Kirkwood Highway, and the black BMW driving out of the gas station onto Kirkwood Highway.<sup>24</sup>

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<sup>17</sup> September 9, 2008 Trial Transcript, pgs. 34-40, 57-58, 83-91.

<sup>18</sup> September 9, 2008 Trial Transcript, pgs. 37-38, 87-91.

<sup>19</sup> September 9, 2008 Trial Transcript. pg. 115.

<sup>20</sup> September 9, 2008 Trial Transcript, pgs. 115-118.

<sup>21</sup> September 9, 2008 Trial Transcript. pgs. 118-126.

<sup>22</sup> September 9, 2008 Trial Transcript, pgs. 128-129.

<sup>23</sup> September 8, 2009 Trial Transcript, pgs. 130-131.

<sup>24</sup> September 9, 2008 Trial Transcript. pgs. 131-138.

13. Captain Goode saw that the black BMW was being driven erratically, very wildly and at a high rate of speed.<sup>25</sup> Believing that a crime had just occurred, the firefighters turned on their emergency lighting and followed the car.<sup>26</sup> The firefighters continued following the BMW as it weaved, swerved and drove erratically and at a high rate of speed. The firefighters never lost sight of the BMW. The driver of the BMW eventually lost control of the vehicle and crashed into a telephone pole.<sup>27</sup> The firefighters pulled the driver of the BMW from the car and remained with him until the police took him into custody.<sup>28</sup>

14. Mr. Pusey arrived at the scene of the crash moments later. Mr. Pusey saw the four firefighters taking the driver of the car out of the car and holding onto him until the police arrived.<sup>29</sup>

15. Jordyn Mattei and her friend, Tristan Spates, both got a good look at Defendant Finn at the gas station and they identified him as the carjacker at trial.<sup>30</sup> Captain Anthony Goode got a good look at Defendant Finn after the car crashed and he identified the Defendant as the driver of the BMW at trial.<sup>31</sup> Mr. Pusey also got a good look at Defendant Finn after he crashed the BMW trying to flee and also identified Defendant at trial.<sup>32</sup>

16. The uncontroverted trial testimony from Jordyn Mattei, her friend Tristian Spates, Chris Pusey and Anthony Goode was that Defendant Finn was the person who stole the car, assaulted Ms. Mattei and fled.

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<sup>25</sup> September 9, 2008 Trial Transcript, pgs. 40-41, 134-135.

<sup>26</sup> September 9, 2008 Trial Transcript, pgs. 136-141.

<sup>27</sup> September 9, 2008 Trial Transcript, pgs. 138-141.

<sup>28</sup> September 9, 2008 Trial Transcript, pgs. 138-142.

<sup>29</sup> September 9, 2008 Trial Transcript, pgs. 124-127.

<sup>30</sup> September 9, 2008 Trial Transcript, pgs. 40, 91-92.

<sup>31</sup> September 9, 2008 Trial Transcript, pgs. 141-143.

<sup>32</sup> September 9, 2008 Trial Transcript, pgs. 126-127.

## **DEFENDANT'S RULE 61 MOTION**

17. On April 29, 2011, Defendant filed this motion for postconviction relief. In the subject motion, Defendant contends that his counsel provided ineffective assistance for a variety of reasons. Defendant raises four grounds for relief. Defendant contends that his counsel was ineffective because: 1) his waiver of his jury trial was coerced by counsel; 2) counsel failed to investigate and raise issues pertaining to Defendant's mental health; 3) counsel failed to subject the State's case to effective adversarial testing; and 4) counsel failed to file pre-trial motions. Defendant also alleges that counsel's overall representation was deficient.

18. Before the motion was referred to the Commissioner, the Defendant's trial counsel submitted an Affidavit responding to Defendant's ineffective assistance of counsel claims. Thereafter the Defendant filed a "supplement rebuttal" thereto.<sup>33</sup> On February 20, 2012, this motion was referred to the Commissioner.

19. In the subject motion, Defendant claims that his counsel was ineffective for a variety of reasons. In order to prevail on an ineffective assistance of counsel claim, Defendant must meet the two-pronged *Strickland* test by showing that: (1) counsel performed at a level "below an objective standard of reasonableness" and that, (2) the deficient performance prejudiced the defense.<sup>34</sup> The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires him to show that there is a reasonable

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<sup>33</sup> Super.Ct.Crim.R. 61(g)(1) and (2).

<sup>34</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

probability that, but for defense counsel's unprofessional errors, the outcome of the proceedings would have been different.<sup>35</sup>

20. Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.<sup>36</sup> Although not insurmountable, the *Strickland* standard is highly demanding and leads to a strong presumption that counsel's conduct fell within a wide range of reasonable professional assistance.<sup>37</sup> Moreover, there is a strong presumption that defense counsel's conduct constituted sound trial strategy.<sup>38</sup>

21. The United States Supreme Court recently reiterated the high bar that must be surmounted in establishing an ineffective assistance of counsel claim. In *Harrington v. Richter*,<sup>39</sup> the United States Supreme Court explained that representation is constitutionally ineffective only if it so undermined the proper functioning of the adversarial process that the defendant was denied a fair trial.<sup>40</sup> The challenger's burden on an ineffective assistance of counsel claim is to show that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. It is not enough to show that the errors had some conceivable effect on the outcome of the proceeding. Counsel's errors must be so serious as to deprive the defendant of a fair trial.<sup>41</sup>

22. The United States Supreme Court explained that a defendant is not guaranteed perfect representation, only a reasonably competent attorney. There is no expectation

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<sup>35</sup> *Id.* at 687-88, 694.

<sup>36</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

<sup>37</sup> *Albury v. State*, 551 A.2d 53, 59 (Del. 1988); *Salih v. State*, 2008 WL 4762323, at \*1 (Del. 2008).

<sup>38</sup> *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

<sup>39</sup> *Harrington v. Richter*, 131 S.Ct. 770 (2011).

<sup>40</sup> *Id.*, at \* 791.

<sup>41</sup> *Id.*

that competent counsel will be a flawless strategist or tactician. A defense attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.<sup>42</sup>

23. The United States Supreme Court reasoned that it is difficult to establish an ineffective assistance claim when counsel's overall performance indicates active and capable advocacy.<sup>43</sup> Counsel's representation must be judged by the most deferential of standards. The United States Supreme Court cautioned that reviewing courts must be mindful of the fact that unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with his client, with opposing counsel, and with the judge.<sup>44</sup>

24. Turning now to the subject case, whether or not defense counsel was a flawless strategist, it is clear from a review of the record that defense counsel provided active and capable advocacy. Defense counsel did not have much to work with. The evidence against Defendant was overwhelming. Eyewitnesses observed Defendant stealing Mattei's car, striking her with the car, and fleeing. Captain Anthony Goode never lost sight of Defendant driving the stolen car from the time he left the Exxon Gas Station in the stolen car until after he crashed the car and was arrested by the police. Even so, defense counsel cross-examined witnesses and made legal arguments as best he could with what he had. When reviewing the entire proceeding, the record reflects counsel's overall performance as being active, thorough and capable advocacy.

25. Defendant first contends that his counsel was ineffective because Defendant's waiver of his jury trial was uninformed, coerced and the product of Defendant being

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<sup>42</sup> *Id.*, at \*787-792

<sup>43</sup> *Id.* at 791.

<sup>44</sup> *Id.* at 787-88.

under the influence of anti-depressant medication. Defense counsel, in his Affidavit, represents that Defendant was fully advised of his right to a jury trial. Defendant was fully advised that he was the only person who could waive the right to a jury trial. Trial counsel never “coerced” Defendant to waive his right to a jury trial. Counsel, despite Defendant’s claim of being under the influence of anti-depressant medication, found him to be in touch with reality, ask intelligent questions of counsel and otherwise unimpaired.<sup>45</sup>

26. The record supports defense counsel’s representations in his Affidavit and further belies Defendant’s contention that his waiver of his jury trial was not knowingly and voluntarily made. First, Defendant personally signed a Stipulation agreeing to waive his right to a jury trial.<sup>46</sup> Moreover, on the record, defense counsel represented to the court, in Defendant’s presence, “I can represent to the Court that we’ve [Defendant and counsel] discussed the various strategies that would go into a jury trial versus bench this morning, and it’s his [Defendant’s] decision, based on my advise, to proceed with a bench trial. And he knows that that’s his decision to make and he has a constitutional right to a jury trial that can’t be withheld from him without his voluntary waiver.”<sup>47</sup>

27. The Superior Court then conducted a colloquy with Defendant to ensure that Defendant’s decision to waive a jury trial was a valid, intelligent and voluntary waiver.<sup>48</sup> Defendant represented to the Superior Court that he understood that he had a constitutional right to a trial by jury. Defendant represented to the Superior Court he was voluntarily waiving that right to a jury trial. Defendant represented to the Superior Court

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<sup>45</sup> Affidavit of Trial Counsel in response to Rule 61 motion, pg. 2.

<sup>46</sup> See, Stipulation of Waiver of Jury Trial, Superior Court Docket No. 15.

<sup>47</sup> September 9, 2008 Trial Transcript, pg. 4.

<sup>48</sup> September 9, 2008 Trial Transcript, pgs. 4-6.

that he had discussed his decision with his counsel. Defendant represented to the Superior Court that he had not taken any drugs or alcohol within the last 24 hours.<sup>49</sup> The Superior Court then asked:

Q: Do you suffer from any medical condition which you believe impairs your ability to make a decision about your jury trial?

A: Not about the jury trial, no.<sup>50</sup>

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Q: Do you know of any reason why you should not be waiving a jury trial?

A: No.<sup>51</sup>

28. Based on Defendant's responses, the Superior Court concluded that Defendant's waiver of his right to jury trial was knowingly and voluntarily made.<sup>52</sup> Defendant is now bound by his testimony at the colloquy regarding his waiver of his jury trial absent clear and convincing evidence to the contrary.<sup>53</sup> Defendant has not presented any clear, contrary evidence to call into question his prior testimony. Despite his contention to the contrary, Defendant's waiver of his right to a jury trial was knowingly and voluntarily made. Defendant's ineffective assistance of counsel claim on this ground must fail.

29. Defendant's second claim is that his counsel was ineffective because counsel failed to investigate his mental health issues and failed to obtain records or interview witnesses concerning same. Defense counsel, in his Affidavit, represented that he was aware of Defendant's mental health history and diagnosis (bipolar disorder) and drug use.

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<sup>49</sup> September 9, 2008 Trial Transcript, pgs. 4-5

<sup>50</sup> September 9, 2008 Trial Transcript, pg. 5.

<sup>51</sup> September 9, 2008 Trial Transcript, pg. 6.

<sup>52</sup> September 9, 2008 Trial Transcript, pg. 6.

<sup>53</sup> See, *State v. Harden*, 1998 WL 735879, \*5 (Del.Super.); *State v. Stuart*, 2008 WL 4868658, \*3 (Del.Super. 2008).

Counsel was also aware that Defendant had been prescribed a narcotic patch to treat pain he was having just days before the offenses. Counsel found Defendant to be in touch with reality, ask intelligent questions of counsel and found him to be otherwise unimpaired. Counsel evaluated the information and determined that it did not establish a mental health defense of any kind and thus did not pursue the matter further.<sup>54</sup>

30. Despite Defendant's contention that his legal competency should have been at issue in this case, defense counsel never believed he had a good faith basis to raise the issue. Given the fact that Defendant appears to have understood the proceedings against him, consulted with his counsel rationally, asked intelligent questions of counsel, and had an understanding of the proceedings against him, there did not appear to be any good faith basis to raise any issue regarding Defendant's legal competency.<sup>55</sup> Defense counsel, having determined that there was not a good faith basis to challenge Defendant's legal competency, cannot be deemed ineffective for failing to do so.

31. Defendant's third claim is that his counsel was ineffective for failing to subject the State's case to effective adversarial testimony. Defendant claims that counsel failed to effectively cross-examine witnesses and failed to call defense witnesses. The decision as to whether or not to call a witness and how to examine and/or cross-examine witnesses who are called are tactical decisions.<sup>56</sup> Great weight and deference are given to tactical decisions by the trial attorney. There is a strong presumption that defense counsel's conduct constituted sound trial strategy.<sup>57</sup> Defendant has failed to overcome this strong presumption. Defendant has not provided any clear examples as to how counsel should

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<sup>54</sup> Affidavit of Trial Counsel in response to Rule 61 motion, at \*2-3.

<sup>55</sup> See, *Williams v. State*, 378 A.2d 117, 119-20 (Del. 1977); 11 *Del. C.* §404(a).

<sup>56</sup> *Outten v. State*, 720 A.2d 547, 557 (Del. 1998).

<sup>57</sup> *Strickland v. Washington*, 466 U.S. 668, 689 (1984); *Harrington v. Richter*, 131 S.Ct. 770 (2011).

have cross-examined the witnesses more effectively. Indeed, from a full, thorough and detailed review of the record, it is apparent that defense counsel did the best he could with what he had to work with. On a clear day, eyewitnesses observed Defendant stealing a car, striking the victim with the stolen car, and then fleeing. Eyewitnesses never lost sight of Defendant from the time he entered the stolen car until the time he was apprehended. The evidence against Defendant was simply overwhelming.

32. In addition, Defendant has not established which witness or witnesses that were not called, should have been called, and thereafter to establish how that witness(es) testimony would have resulted in a different outcome of his trial. Defendant does not provide concrete allegations as to how any individual not called would have helped his defense. Defendant does not make any concrete factual allegations, let alone concrete allegations of actual prejudice. Conclusory, unsupported and unsubstantiated allegations are insufficient to establish a claim of ineffective assistance of counsel.<sup>58</sup>

33. Defendant's fourth claim is that counsel was ineffective for failing to file pre-trial motions. Specifically, motions to suppress, speedy trial, and for a hearing to determine his competency to stand trial. Defense counsel, in his Affidavit, states that the only pre-trial motion he filed was a motion to reduce bail. Defense counsel represents that he did not file any other pre-trial motions because counsel did not believe he had a good faith basis to do so.<sup>59</sup> As previously discussed, Defendant has failed to set forth any legal or factual basis to support a meritorious motion to challenge his competency to stand trial. Trial counsel cannot be deemed ineffective for failing to file a motion that lacked merit.

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<sup>58</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990); *State v. Brown*, 2004 WL 74506, \*2 (Del.Super. 2004)(conclusory and unsubstantiated allegations of unprofessional conduct are insufficient to support a motion for postconviction relief).

<sup>59</sup> Affidavit of Defense Counsel in response to Rule 61 motion, at \*3-4.

Moreover, Defendant has also failed to set forth any legal or factual basis to support a meritorious suppression motion. Trial counsel does not have to file meritless motions; in fact, counsel has an obligation not to do so.

34. Defendant was arrested on the date of the incident, January 30, 2008. He was indicted on March 17, 2008, and his trial was held on September 9-10, 2008, within nine months of his arrest. There were no significant delays in the case, let alone any significant delay caused by the State. Defendant has failed to demonstrate how his speedy trial rights were denied, how his attorney was deficient in any regard, or how he has been prejudiced. Defendant was brought to trial within reasonable time limits. There is no support in the record to contend otherwise and counsel cannot be deemed ineffective for failing to file a motion that lacked merit.

35. As to Defendant's general contention that defense counsel's overall representation was deficient, Defendant has failed to make any concrete allegations of actual prejudice and substantiate them. Defendant has failed to meet his burden to establish that defense counsel's conduct was deficient in any regard nor has he established actual prejudice as a result of any alleged deficiency. Defendant's motion for postconviction relief must fail.

36. Defendant's motion for the appointment of counsel, filed on April 16, 2012, after this motion had been fully briefed, is hereby denied. When, like the subject motion, a Rule 61 motion is insubstantial, wholly lacking in merit, and wholly without any factual support, a request for the appointment of counsel is properly denied.<sup>60</sup>

37. To the extent there is any outstanding motion(s) related to this Rule 61 motion, such as a motion to compel documents, motion to expand the evidentiary record, and/or any other motion, any such outstanding motion is hereby denied. Any additional

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<sup>60</sup> See, *Martinez v. Ryan*, 132 S.Ct. 1309, 1319 (2012); Superior Court Criminal Rule 61(e).

documents, or other materials, sought in relation to this motion are not material to the determination of Defendant's claims raised herein. The parties' submissions and the evidentiary record were carefully considered. Defendant's allegations were reasonably discounted as not supported by the record, persuasively rebutted by counsel's affidavit, or not material to a determination of Defendant's claims. There is no just reason to delay the issuance of this decision in order to permit the Defendant to obtain additional documents and materials which will have no effect or impact on the determination of the issues raised herein.

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied.

**IT IS SO RECOMMENDED.**

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Commissioner Lynne M. Parker

oc: Prothonotary  
cc: Edmund M. Hillis, Esquire