## SUPERIOR COURT OF THE STATE OF DELAWARE

RICHARD F. STOKES

JUDGE

SUSSEX COUNTY COURTHOUSE 1 THE CIRCLE, SUITE 2 GEORGETOWN, DE 19947 TELEPHONE (302) 856-5264

September 6, 2012

N440 STATE MAIL Kermit R. West SBI: 0004 James T. Vaughn Correctional Center 1181 Paddock Road Smyrna, Delaware 19977

RE: State of Delaware v. Kermit R. West Case ID: 7307000001

Dear Mr. West:

As you state in your second motion for postconviction relief ("Rule 61"), you have served 50 years in prison for shooting Lorenzo Byrd Whaley and Mamie Hester Whaley to death with a 12-gauge shotgun in October 1961. You did not appeal your conviction, attempt to withdraw your guilty plea or file Rule 35 motions. However, you wrote numerous letters to this Court and to the Delaware Supreme Court regarding your life sentences.

In 1990, a judge of this Court explained to you by letter that the punishment for first-degree murder at the time you were convicted was life imprisonment. The Court further stated that your sentences for murder continue until the end of your life and that you shall remain in prison for that time, barring parole. Those statements are true today.

You filed your first motion for postconviction relief in July 2011, which was summarily dismissed under the three-year time bar which was in place when Rule 61 was adopted. The dismissal was affirmed. *West v. State*, 2012 WL 562820 (Del.). You now file a second such motion, which is time-barred for the reasons explained on your first motion. The time bar may not be enlarged unless you show that one of Rule 61's exceptions applies. *Robinson v. State*, 584 A.2d 1203, 1204 (Del. 1990). You have not provided any reason for an enlargement of time.

Even if your motion were timely, it would be dismissed as having been previously adjudicated. Rule 61(i)(4). That is, the underlying claims are sentencing issues you have brought in various forms to other judges. You have received more than one judicial explanation of your life sentences.

You state in conclusory fashion that one or both of your attorneys said you would receive a sentence of 45 years and that the sentencing judge so stated. The record does not support these assertions.

The original sentencing order, dated September 14, 1962, imposes imprisonment on you for the rest of your natural life for each of the two murders. You have not identified which attorney told you your time would be 45 years. In fact, you argued in 1990 that your sentence should have been 30 years, and the Court responded to the 30-year assertion. Now that you have served 50 years, you assert your sentence should have been 45 years. Your motion is untimely and inconsistent with your own prior statements to the Court. It is at best frivolous.

Finally, justice does not require that an issue that has been phrased one way be revisited if the claim is refined or restated. *Riley v. State*, 585 A.2d 719, 721 (Del.1990).

For these reasons, it plainly appears that you are not entitled to relief and your motion for postconviction relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Very truly yours,

/s/Richard F. Stokes

Richard F. Stokes

Original to Prothonotary xc: Department of Justice

<sup>&</sup>lt;sup>1</sup>The record shows that in December 1990, you wrote to the Delaware Supreme Court about your life terms. That Court assigned the letter to the trial court, and an explanatory letter was issued February 5, 1990. In July 1996 you asked the same questions of President Judge, now Justice, Henry duPont Ridgely. A judicial response was issued in August 1996.