

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

STATE OF DELAWARE)	
)	
)	
v.)	ID#: 0804025366
)	
TERRENCE LAMARR,)	
Defendant)	

ORDER

**Upon Defendant’s Motion for Postconviction Relief under
Superior Court Criminal Rule 61 – *SUMMARILY DISMISSED.***

1. Defendant, then *pro se*, filed a motion for postconviction relief on January 24, 2014, concerning his February 18, 2009 guilty plea to rape in the first degree and four related felonies, and his April 24, 2009 sentencing to natural life plus 26 years in prison.

2. When he stood for sentencing, Defendant faced at least 20 years in prison, minimum/mandatory. Accordingly, the sentence imposed significantly exceeded the minimum/mandatory. That accounts for this motion. Defendant accuses trial counsel of ineffectiveness in three ways, all concerning the long sentence.

3. Instead of referring the motion as provided in Superior Court Criminal Rule 61(d)(1),¹ the Prothonotary improperly referred the motion to the then-New Castle County Criminal Assignment Judge, who entered an order appointing counsel on January 29, 2014. Because Defendant pleaded guilty, appointment of counsel was discretionary.² Under the court's rules, as set out above, the undersigned judge, who took Defendant's plea, should have decided whether appointment of counsel was indicated. Because counsel's appointment was potentially no worse than an error in his favor, it merits no further discussion.³

4. After his April 2009 sentencing, Defendant filed a timely appeal on May 1, 2009. But, through original counsel, Defendant voluntarily dismissed his appeal on August 31, 2009.⁴ The Supreme Court's mandate was issued September 1, 2009.

5. Because Defendant's motion was filed more than one year after his conviction became final in September 2009, his motion for postconviction relief

¹ "A first postconviction motion shall be presented promptly to the judge who accepted a plea of guilty or nolo contendere or presided at trial in the proceedings leading to the judgment under attack. If the appropriate judge is unavailable to consider the motion, it shall be presented to another judge in accordance with the procedure of the court for assignment of its work."

² Super. Ct. Crim. R. 61(e)(2).

³ *Compare/Weber v. State*, 547 A2d 948 (1988).

⁴ Supreme Ct. R. 29(a); *Lamarr v. State*, 245, 2009.

is procedurally barred as untimely.⁵

6. Defendant has not alleged reasonable cause to excuse his failing to file a timely motion,⁶ nor has he alleged specific prejudice.⁷ For example, Defendant has not alleged that had he known the sentencing judge would exceed the sentencing guidelines, Defendant would have taken the case to trial, and, most significantly, he would have received a better outcome than he received through his guilty plea. The fact that Defendant did worse at sentencing than he expected does not mean that he would have done better had he gone to trial. Again, Defendant has not alleged, much less demonstrated, how he was prejudiced by pleading guilty. And, Defendant was carefully warned about the possible sentence when he pleaded guilty.

7. Defendant also has not alleged, nor has he shown, how postconviction relief is necessary in the interest of justice. Defendant repeatedly told the court that he was pleading guilty because he was “in fact” guilty. He specifically denied that he “was pleading guilty just to plead guilty,” and Defendant openly took responsibility for what he did.

8. What Defendant did was enter his 14 year old step-daughter’s bedroom, threaten her, bound her, hit her in the head with a baseball bat and rape her

⁵ Super. Ct. Crim. R. 61(i)(1).

⁶ Super. Ct. Crim. R. 61(i)(3)(A).

⁷ Super. Ct. Crim. R. 61(i)(3)(B).

in the bed where she slept. It appears that Defendant's presence in the victim's home violated another court's order. The court does not recount these details in order to justify the sentence, which they do. The facts bring into specific relief how much worse the outcome probably would have been for Defendant if he had gone to trial. As bad as Defendant's sentence turned out to be, it could and probably would have been worse had he faced a jury.

9. In considering whether Defendant has invoked the "interest of justice" exception to Rule 61's procedural bar, the court also notes that after reviewing the record, Defendant's postconviction counsel filed a motion to withdraw on September 12, 2014, having found no meritorious claim. (Counsel's motion to withdraw is **GRANTED**.)

For the foregoing reasons, Defendant's January 14, 2014 motion for postconviction relief is **SUMMARILY DISMISSED**.⁸ The Prothonotary **SHALL** notify Defendant.

The court will maintain jurisdiction. Defendant has leave to file a motion to reduce sentence after he has served the minimum/mandatory sentence – 20 years – day-for-day. It is not clear that Defendant will ever be suitable for release, which was the sentencing judge's conclusion. In the distant future, Defendant should

⁸ Super. Ct. Crim. R. 61(d)(5).

at least receive further consideration based on what has happened during decades in prison.⁹ Until then, expect the court to summarily dismiss repetitive motions under Rule 61.¹⁰

IT IS SO ORDERED.

Date: January 6, 2015 _____ /s/ Fred S. Silverman
Judge

oc: Prothonotary (Criminal Division)
pc: Renee Hrivnak, Deputy Attorney General
Brian J. Chapman, Esquire
Terrence Lamarr, Defendant

⁹ *See also*, 11 *Del. C.* §4217.

¹⁰ Super. Ct. Crim. R. 61(i)(2).