IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	ID No. 0912011155
	)	
EARL BRADLEY,	)	
	)	
Defendant.	)	

Submitted: February 13, 2015
Decided: June 5, 2015

On Petitioner Earl B. Bradley's
Second Amended Motion for Postconviction Relief - DENIED

OPINION

Elizabeth R. McFarlan, Esquire, Department of Justice, 820 N. French Street, Wilmington, DE 19801. Attorney for State of Delaware.

Patrick J. Collins, Esquire, Albert J. Roop, V, Esquire, Collins & Roop, 8 East 13th Street, Wilmington, DE 19801. Attorneys for Defendant Earl Bradley.

CARPENTER, J.

Before this Court is Petitioner Earl Bradley's Motion for Postconviction Relief pursuant to Superior Court Rule 61. For the reasons set forth below, Petitioner's Motion is hereby **DENIED.**

FACTUAL AND PROCEDURAL BACKGROUND

A detailed account of the allegations against Earl Bradley ("Bradley" or "Petitioner") are set forth in the Court's Opinion of April 13, 2011, and the Supreme Court decision of September 6, 2012, and as such they will not be repeated. However, relevant to the issues raised in this Motion, following Bradley's December 16, 2009 arrest, Eugene Maurer, Esquire represented Bradley at his preliminary hearing on January 14, 2010, entering a waiver on his behalf. On January 20, 2010, the State filed a complaint under 11 *Del.C.* § 1505, alleging violations of the civil racketeering statute, and the next day they filed a Racketeering Lien Notice effectively freezing Bradley's assets. A Grand Jury indicted Bradley on February 22, 2010, charging him with multiple counts of first degree rape, second degree assault, sexual exploitation of a child, first and second degree unlawful sexual contact, and continuous sexual abuse of a child.

On March 21, 2010, Mr. Maurer wrote to President Judge Vaughn indicating that, due to the financial demands of this case, he could no longer represent

Bradley. Shortly thereafter, Dean Johnson, Esquire, and Stephanie Tsantes, Esquire, of the Public Defender's Office entered their appearance in Bradley's case.[1]

On July 9, 2010, Bradley moved to suppress all evidence seized during the December 16 and 17, 2009 search. The Court held an evidentiary hearing on the motion on August 31 and September 1, 2010, and subsequently denied the motion. As a result, Bradley waived his right to a jury trial, and a bench trial commenced on June 7, 2011. On June 23, 2011, the Court found Bradley guilty on all counts. He was sentenced to 14 life sentences, and 164 years at Level V incarceration. On appeal, the Delaware Supreme Court sitting *en Banc* affirmed, finding that the affidavit of probable cause alleged sufficient facts to support the search warrant and that the execution of the warrant was reasonable and within the bounds of the warrant issued.

Bradley filed a timely *pro se* Motion for Postconviction Relief on February 27, 2013. This Court appointed counsel for Bradley, and counsel submitted an Amended Motion for Postconviction Relief. Without objection, Bradley filed a Second Amended Motion for Postconviction Relief and this is the Court's decision on that Motion.

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[1] Additional attorneys from the Public Defender's Office including Robert Goff, Esquire joined the case as it progressed.

DISCUSSION

In the instant motion, Bradley asserts five grounds for postconviction relief: (1) State action deprived him of his choice of counsel under the Sixth Amendment to the United States Constitution and Article I, § 7 of the Delaware Constitution; (2) Ineffective assistance of trial counsel for failing to challenge the trial court's consideration of evidence outside of the four corners of the search warrant; (3) Ineffective assistance of appellate counsel for failure to raise the issue of the trial court's consideration of evidence outside of the four corners of the search warrant on appeal; (4) Ineffective assistance of appellate counsel for failing to move for reargument following the Delaware Supreme Court's Opinion affirming conviction after it misapprehended a key fact; (5) Ineffective assistance of counsel for failing to effectively assert or move for reargument on Detective Spillan's "unguided, discretionless" search of digital items violated the Fourth Amendment of the United States Constitution and Article I, § 6 of the Delaware Constitution.

Bradley's Motion for Postconviction Relief, filed in May 2014, is controlled by Superior Court Criminal Rule 61 prior to its amendment in June 2014. Before addressing the merits of a motion for postconviction relief, the Court must first address the four procedural requirements of Superior Court Criminal Rule 61(i).[2]

[2] *See Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991) ("The first inquiry in any analysis of a post-conviction relief claim is whether the petition meets the procedural requirements of Rule 61.").

First, a motion for postconviction relief must be filed within one year of the conviction's final judgment.[3] Second, the motion must not assert any ground for relief not raised in a prior postconviction motion.[4] Third, the motion must not advance any claims the movant did not raise in the proceedings leading to his conviction unless he shows cause for relief from the procedural default and prejudice from the violation of his rights.[5] Fourth, the motion must not contain any claim that has already been adjudicated in a proceeding leading to the conviction unless the interest of justice requires reconsideration.[6]

If a procedural bar exists, the Court will not consider the merits of the postconviction claim unless the defendant can show that the exception found in Rule 61(i)(5) applies.[7] Rule 61(i)(5) provides that consideration of otherwise procedurally barred claims is limited to claims that this Court lacked jurisdiction, or to "a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity, or fairness of the proceedings leading to the judgment of conviction."

At the outset, the Court notes that Bradley has satisfied Rule 61(i)(1)'s first procedural requirement because he timely filed his Motion. The second

[3] Super. Ct. Crim. R. 61(i)(1).
[4] Super. Ct. Crim. R. 61(i)(2).
[5] Super. Ct. Crim. R. 61(i)(3).
[6] Super. Ct. Crim. R. 61(i)(4).
[7] Super. Ct. Crim. R. 61(i)(5).

requirement is inapplicable here because Bradley has not filed any previous postconviction motions. The State argues that Bradley's choice of counsel claim is procedurally barred under the third requirement because Bradley failed to assert this claim prior to his conviction. Furthermore, the State contends that Bradley's ineffective assistance claims against both trial counsel and appellate counsel are barred by 61(i)(4) to the extent that he is attempting to refine and restate his allegations that an illegal search occurred, as those claims have already been adjudicated. This Opinion will address each of Bradley's claims in the order in which he presented them; and will first determine, for each claim, whether such claim is barred by the limitations set forth in Rule 61.

Choice of Counsel

Bradley first argues that state action deprived him of his right to choice of counsel under the Sixth Amendment and the Delaware Constitution. He alleges that the State knew or should have known that he would be deprived of the funds necessary to continue to retain his choice of counsel when the State filed a civil complaint against him and froze his assets. Moreover, Bradley alleges that the civil complaint was not only unsupported by his criminal charges but that the complaint also failed to allege a claim upon which relief can be granted, making the seizure of his assets pursuant to that complaint erroneous. The State responds

that Bradley's claim is procedurally barred under Rule 61(i)(3) because Bradley failed to raise this issue prior to conviction.

In order to avoid procedural default under Rule 61(i)(3), the movant must demonstrate both cause and actual prejudice. To demonstrate cause, Bradley must show "some external impediment" which prevented him from raising the claim.[8] Bradley argues that once he lost his retained counsel, there was no one left to advocate for him on this claim. This does not show cause under 61(i)(3). The Court does not believe, nor does Bradley allege, that his appointed counsel was prevented in any way from filing a choice of counsel claim at any time prior to his conviction nor can the Court recall Bradley attempting to independently raise this issue. Therefore, Bradley fails the requirement under Rule 61(i)(3).

However, that is not the end of the analysis. Rule 61(i)(5) provides that any claim barred by Rule 61(i)(3) may still be considered when the movant can show "a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction."[9] Rule 61(i)(5), commonly referred to as the fundamental fairness exception, is narrow and only applies when the movant can present some credible evidence that

[8] *Younger v. State*, 550 A.2d 552, 556 (Del. 1990).
[9] Super. Ct. Crim. R. 61(i)(5).

he has been denied a substantial constitutional right.[10] The Court finds the assertions made by Bradley involve a critical constitutional question that warrants the issue to be addressed in spite of the procedural bars.

The Petitioner argues that his constitutional right to choice of counsel was denied as a direct result of state action, i.e. freezing his assets, and such denial is subject to structural error review, thus requiring automatic reversal. The Sixth Amendment of the United States Constitution and Article I, §7 of the Delaware Constitution provide that "in all criminal prosecutions, the accused shall enjoy the right... to have the assistance of counsel for his defense."[11] The United States Supreme Court and the Delaware Supreme Court have held that "[t]rial judges 'must recognize a presumption in favor of a defendant's counsel of choice.'"[12] However, "the right to have assistance by the attorney of one's choice…is not absolute."[13] For example, "a defendant may not insist on representation by an attorney he cannot afford…."[14]

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[10] *See Younger v. State,* 580 A.2d 552, 555 (Del.1990) ("The fundamental fairness exception ... is a narrow one and has been applied only in limited circumstances."), *see also Jackson v. State,* 1995 WL 439270, at *3 (Del. Jul. 19, 1995) (holding that the movant bears the burden of showing that he has been deprived of a substantial constitutional right).

[11] U.S. Const. amend. VI; Del. Const. art. I, § 7 (providing that "In all criminal prosecutions, the accused hath a right to be heard by himself or herself and his or her counsel....").

[12] *Lewis v. State*, 757 A.2d 709, 713 (Del. 2000) (*quoting Wheat v. U.S.*, 486 U.S. 153,166 (1988)).

[13] *Id*.

[14] *Wheat v. U.S.*, 486 U.S. at 160.

Petitioner cites to two United States Supreme Court cases that rank the right to choice of counsel as a structural error and therefore is not judged under the harmless-error standard.[15] In *United States v. Gonzalez-Lopez*, where the trial court denied an application for *pro hac vice* admission by defendant's hired attorney on the grounds that he had violated a professional conduct rule, the Court stated they had "little trouble, concluding that erroneous deprivation of the right to counsel of choice 'with consequences that are necessarily unquantifiable and indeterminable, unquestionably qualifies as structural error.'"[16] In *United States v. Davila*, where the defendant asked for and was denied a new attorney, the Court reiterated that denial of choice of counsel was characterized as a structural error. The Court stated "[w]e have characterized as 'structural' 'a very limited class of errors' that trigger automatic reversal because they undermine the fairness of a criminal proceeding as a whole. Errors of this kind include denial of counsel of choice, denial of self-representation, denial of public trial and failure to convey to a jury that guilt must be proved beyond a reasonable doubt."[17] Petitioner contends that he too was denied choice of counsel and is entitled to reversal based on those grounds. However, Petitioner's argument fails for two reasons.

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[15] *See U.S. v. Davila*, 133 S.Ct. 2139 (2013); *see also U.S. v. Gonzalez-Lopez,* 854 U.S. 140 (2006).
[16] *U.S. v. Gonzalez-Lopez*, 854 U.S. at 150.
[17] *U.S. v. Davila*, 133 S.Ct. 2139, 2149 (2013).

First, Petitioner's case is distinguishable from the cases he cites because the Court here was not the state actor who denied him choice of counsel. Neither the Petitioner, nor the Court were able to find any case law to support a finding of structural error when an actor, other than the trial judge, acts to deny a defendant choice of counsel. The Court believes that the intent in including denial of choice of counsel in the category of structural error was to correct action taken by the trial judge, not by third party actors.

In addition, the Court believes that Petitioner's claim that he was denied choice of counsel is a mischaracterization. Mr. Maurer entered his appearance for the limited purpose of the preliminary hearing held on January 14, 2010. On March 4, 2010, Mr. Maurer sent President Judge Vaughn a letter stating his reasons for failing to formally enter his appearance at arraignment. In the letter Mr. Maurer states:

> I was initially hired by a member of Dr. Bradley's family to evaluate the case for them so that they could make a determination as to whether they should fund a defense in the case. I am getting the sense at this point in time that they are not inclined to come forward with the funds necessary to secure mental health evaluations which must be done as part of any 'due diligence' in representing this defendant. That being the case, and given the state of the law in this jurisdiction, I cannot represent Dr. Bradley privately and request that the court [sic] fund expert witness evaluations.[18]

[18] Letter from Eugene M. Maurer, Esquire, to President Judge James T. Vaughn, Jr., President Judge, Delaware Superior Court (Mar. 4, 2010) (*attached as* Ex. 10 to Bradley's Motion).

It would seem to the Court from this letter that Petitioner himself had not hired Mr. Maurer as counsel, nor is there any indication that Mr. Maurer was Petitioner's chosen counsel. Mr. Maurer's representation appears to have been limited to advising the family as to the merits of the case and the funds that would be needed to provide a defense. Clearly that amount would be significant, and from Mr. Maurer's letter it is clear that the family was not inclined to provide that support. There is nothing from Mr. Maurer to suggest freezing of Petitioner's assets played any part in the decision not to pursue private counsel.

The Court also finds that Petitioner's attempt to attack the merits of the racketeering activity complaint is not a colorable claim in a Rule 61 proceeding. That action was a separate civil matter and certainly in the criminal proceeding Bradley made no argument to release funds for his representation, nor did he ask for other counsel. Having taken no action to allow the trial court to rule on the merits of the racketeering complaint, he cannot now assert that the underlying basis of that action was defective.

Ineffective Assistance of Counsel

Bradley next advances four broad ineffective assistance claims against trial and appellate counsel. These claims are: (1) trial counsel's failure to challenge the trial court's consideration of evidence outside of the four corners of the search

warrant; (2) appellate counsel's failure to raise the issue of the trial court's consideration of evidence outside of the four corners of the search warrant on appeal; (3) appellate counsel's failure to move for reargument following the Delaware Supreme Court's opinion affirming conviction after it misapprehended a key fact; and (4) counsel's failure to effectively assert or move for reargument on whether Detective Spillan's "unguided, discretionless" search of digital items violated the Fourth Amendment of the United States Constitution and Article I, §6 of the Delaware Constitution.

Bradley can only prevail on his ineffective assistance of counsel claims if they are not procedurally barred by Rule 61(i) and if his claims satisfy the two-part test articulated in *Strickland v. Washington*.[19] The State alleges that Bradley is simply attempting to revise and re-litigate claims which have been previously adjudicated, and present new claims which should have been brought on direct appeal, and as such he is barred from doing so by Rule 61(i)(3) and 61(i)(4). While the Court agrees these claims are based upon and arise from matters already adjudicated at trial and affirmed on appeal, they are framed in a manner that calls into question the actions of counsel in failing to raise them at trial or on appeal. Thus, the Court finds they are not procedurally barred but are limited to the conduct of Bradley's counsel and not the underlying merits of the search decisions.

[19] *See Strickland v. Washington,* 466 U.S. 668, 687 (1984).

Per *Strickland*, Bradley must first show that "counsel's representation fell below an objective standard of reasonableness."[20] When evaluating counsel's conduct, the Court indulges a "strong presumption that counsel's conduct was professionally reasonable."[21] Second, Bradley must demonstrate that counsel's performance prejudiced his defense.[22] In other words there must have been a reasonable probability that the trial's outcome would have been different but for counsel's error.[23] A reasonable probability means "a probability sufficient to undermine confidence in the outcome" of the proceeding.[24]

1. Failure to challenge consideration of outside evidence

Bradley argues that trial counsel was ineffective for failing to object to the presentation of evidence outside of the four corners of the warrant, which sought to bolster the descriptions of the buildings in the warrant, and ultimately upon which probable cause was based. Specifically, Bradley alleges that a search warrant can only issue upon a showing of probable cause where the places to be searched are described with particularity. Bradley contends that the Court used evidence outside of the four-corners of the warrant to find probable cause existed for the search.

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[20] *Id*. at 687-88.
[21] *Albury v. State,* 551 A.2d 53, 59 (Del. 1988).
[22] *Strickland v. Washington,* 466 U.S. at 687.
[23] *Id*.
[24] *Id*. at 694.

First, it is important to emphasize that probable cause was never an issue before the trial court. Probable cause to conduct the search was overwhelming and compelling. What was at issue was the requirement that the warrant must describe with particularity the place to be searched. Bradley alleges that without the benefit of the testimony from Detective Elliot regarding the descriptions of the buildings to be searched, the Court would have been left to rule based solely on the affidavit and warrant, and would have been forced to find the search went beyond that allowed by the warrant.

According to trial counsel's affidavits, they had determined that testimony outside of the scope of the four corners of the warrant was necessary for them to effectively challenge the manner in which the search was performed. What is lost in Petitioner's argument is that clearly the doctor's office and a white outbuilding were authorized by the Magistrate to be searched. The real issue was the manner in which the search was conducted, and the decision by the police to proceed with the search after recognizing that there were more buildings at the Doctor's compound than originally anticipated. Since there was no other effective means to attack how the search was conducted, clearly allowing testimony regarding the search was not only an appropriate strategic decision but was the wise course of action. It clearly did not fall below the standard of objective reasonableness.

Further, Bradley cannot demonstrate that counsel's acts prejudiced his defense. Even without the testimony of Detective Elliot, the Court found that the description of the buildings was sufficient:

> [T]he Court must determine whether based on the information provided in the warrant and affidavit it would be clear to the issuing judge that an additional outbuilding was included within the property that would be searched. While not listed in the correct portion of the warrant, the white outbuilding is referenced in the portion of the warrant used to identify the owner of the premises to be searched.[25]

In addition, in the affidavit sworn to by Detective Elliot, he states: "The office also has an outbuilding, which affiant [h]as learned is utilized by Dr. Bradley. Dr. Bradley takes his patients into the outbuilding as well as the basement of the office."[26] Therefore, this claim fails, as Bradley is unable to satisfy either prong of *Strickland.*

2. Failure to challenge consideration of outside evidence on appeal

Bradley also alleges that appellate counsel was ineffective for failing to litigate the four corner issue on appeal. Trial counsel, Robert M. Goff, was also co-counsel on appeal. In his affidavit to the Court, he explains that it was a strategic decision to allow testimony outside of the four corners of the warrant because "it was relevant for challenging the manner in which the police

[25] *State v. Bradley*, 2011 WL 1459177, at *5 (Del. April 13, 2011).
[26] *Id.* (*quoting* Search warrant, Dec. 15, 2009)(*attached as* Ex. 3 to Bradley's Motion)).

performed the search that discovered the evidence against Bradley."[27] Having made this decision, which the Court finds was clearly within counsel's professional purview, it would have been inappropriate to second guess that decision and argue a different position on appeal. Mr. Goff's co-counsel on appeal, Nicole Walker, Esquire, also explained in her affidavit that appellate counsel's decision not to challenge the trial court's consideration of evidence outside of the warrant was a strategic decision and that counsel "raised issues they believed to have the best chance of success" on appeal.[28]

When evaluating counsel's conduct, the Court indulges a "strong presumption that counsel's conduct was professionally reasonable."[29] The Court is confident that counsel's conduct was professionally reasonable here. Counsel sufficiently explained in their affidavits that their decision not to challenge evidence outside of the warrant was strategic because the testimony was helpful in challenging the way in which the warrant was carried out. The Court believes this was a professionally reasonable strategic decision by counsel and therefore passes the *Strickland* test.

[27] Goff Aff.¶ 2, March 20, 2014.
[28] Walker Aff. ¶ 9, December 19, 2014.
[29] *Albury v. State,* 551 A.2d at 59.

3. Appellate Counsel's Failure to move for reargument

Bradley next alleges that appellate counsel was ineffective because they failed to move for reargument when the Supreme Court "misapprehended" a field in the search warrant for a function which belonged to another field in its analysis of the warrant.

Bradley argues that in affirming his conviction, the Supreme Court "misapprehended a key fact."[30] According to Bradley, "[t]here are two fields contained in the search warrant which deal with the 'place' to be searched, both of which have different functions. The Supreme Court utilized one field in its analysis for a function which only belonged to the other field."[31] Furthermore, Bradley contends that his appellate counsel's failure to move for reargument on this issue constitutes ineffective assistance of counsel.

The fields of the Search Warrant were as follows:

> SPECIFIC DESCRIPTION OF PREMISES AND/OR PLACE(S) AND/OR VEHICLES AND/OR PERSON(S) TO BE SEARCHED:
> A two store residence style building, white in color, located at 18259 Coastal Highway, Lewes, DE 19958. There is a yellow Volkwagen [*sic*], with Baybees Pediatrics displayed on the car. There are signs at the front of the building that display "BayBees Pediatrics and Earl B. Bradley on the signs."
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> ***

[30] Bradley's Motion at 31.
[31] *Id*.

> NAME OF OWNER(S), OCCUPANT(S) OR POSSESSOR(S) OF PREMISES AND/OR PLACE(S) AND/OR VEHICLE(S) AND/OR PERSON(S) TO BE SEARCHED:
> Earl B. Bradley (DOB – 05/10/53), a white male. BayBees Pediatrics, 18259 Coastal Highway, to include a white outbuilding, located on the property.[32]

In its September 6, 2010 Opinion, the Supreme Court held that, "[t]he search warrant listed the 'place' to be searched as BayBees Pediatrics, 18259 Coastal Highway, to include a white outbuilding, located on the property.'"[33] Bradley now contends that the Supreme Court made this finding in error because language of the white outbuilding appeared in the "owner" portion of the warrant, not the "specific description" field of the warrant.

In their affidavits, appellate counsel admitted that they considered appealing and moving for reargument on this issue, but rejected its pursuit on appeal. After reviewing the briefs and considering the comments made at oral argument, counsel determined that the Supreme Court made a finding that "whether the 'place' to be searched was listed in the 'owner' portion of the warrant or in the 'specific description' portion of the warrant was not dispositive," and did not warrant reargument.[34]

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[32] Search warrant, Dec. 15, 2009 (*attached as* Ex. 3 to Bradley's Motion).

[33] *Bradley v. State*, 51 A.3d 423, 434 (Del. 2012).

[34] Walker Aff. ¶ 9, December 19, 2014.

The Court is satisfied that counsel's decision not to pursue a motion for reargument on this issue was objectively reasonable. Counsel intelligently and conscientiously reviewed the briefs submitted to the Supreme Court, the discussion at oral argument, and the Supreme Court's Opinion and decided that the Supreme Court did not "misapprehend a key fact," but rather made a finding of fact with which counsel disagreed. Appellate counsel are both excellent attorneys that are strong advocates for the rights of their clients. To suggest their decision was misguided or wrong is simply unsupportable. The purpose of *Strickland's* first prong "is to eliminate the distorting effects of hindsight in examining a strategic course of conduct that may have been within a range of professional reasonableness at the time."[35] Here, the Court believes that appellate counsel's course of conduct was well within the range of professional reasonableness at the time it decided not to move for reargument. Therefore, Bradley cannot satisfy the *Strickland* test on this claim.

4. Failure to effectively assert unlawful search at trial and on appeal

Finally, Bradley also asserts ineffective assistance of trial counsel for failing to properly raise the issue that Detective Spillan's search of the digital items was not reasonably tailored to find the items sought in the warrant, the issue that

[35] *State v. Conner,* 2002 WL 561009, at *1 (Del. Super. Apr. 15, 2002).

Detective Spillan failed to limit his search of that media to the particular content of the search warrant; and, ineffective assistance of appellate counsel for failing to properly raise these issues on appeal.

On October 22, 2010, Bradley's trial counsel filed a Motion to Suppress Evidence Seized from the Search Warrant. The issues were fully briefed, a hearing was held, and this Court issued a ruling on April 13, 2011. During the Motion to Suppress stage, trial counsel specifically argued that the police were looking for items not even "remotely resembling medical files"as was described in the warrant.[36] Further, they argued that Detective Spillan did not even know the names of the eight patients whose files they were supposedly searching for. Also, on appeal of this Court's Opinion, appellate counsel argued that the police exceeded their authority when they opened deleted video files, and seized electronic computers and media unrelated to patient files as described in the warrant.

The argument here is simply a desperate attempt by Bradley to reassert fully litigated claims as ineffective assistance of counsel allegations that really are directed to the legality of the search which has been resolved and affirmed on appeal. The Court is satisfied that counsel's representation at the Motion to Suppress stage and their advocation on appeal was professionally reasonable. The

[36] Defense Opening Brief in Support of the Motion to Suppress Evidence Seized from a Search Warrant Executed on December 16, 2009 at pg. 30, Oct. 22, 2010.

issues regarding the search were fully litigated including the conduct of the police in conducting the searches. Under Rule 61(i)(4),

> any ground for relief which has already been an adjudicated is barred unless reconsideration of the claim is warranted in the interest of justice…. In order to invoke the "interest of justice" provision of Rule 61(i)(4) to obtain relitigation of a previously resolved claim a movant must show that subsequent legal developments have revealed that the trial court lacked the authority to convict or punish him.[37]

Here, Bradley does not argue any legal developments that would change the trial court's ruling. Thus, there is no "interest of justice" exception and these claims are barred. Accordingly, Petitioner cannot support his claims for ineffective assistance of counsel.

CONCLUSION

Therefore, Bradley's Second Amended Motion for Postconviction Relief is hereby **DENIED.**

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

[37] *Flamer v. State,* 585 A.2d 736, 745-46 (Del. 1990).