

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 Plaintiff,)
 v.)
 FREDDY L. FLONNORY,) Cr. ID. No. 9707012190
)
 Defendant.)

Submitted: November 20, 2017
Decided: January 2, 2018

Upon Commissioner’s Report and Recommendation that Defendant’s Motion for Postconviction Relief (Fourth) Should Be Summarily Dismissed

ADOPTED

ORDER

This 2nd day of January, 2018, the Court has considered the Commissioner’s Report and Recommendation, Defendant’s Motion for Postconviction Relief, Defendant’s objections to the Commissioner’s Report and Recommendations, and the relevant proceedings below.

On July 18, 2017, Defendant Freddy L. Flonnory filed this *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 November 8, 2017. The Commissioner

recommended that Defendant's Motion for Postconviction Relief be summarily dismissed.

"Within ten days after filing of a Commissioner's proposed findings of fact and recommendations . . . any party may serve and file written objections."¹ Defendant Flonnory filed written objections on November 20, 2017, more than ten days after the Commissioner's November 8 report. In addition to this procedural deficiency, upon review, the Court finds Defendant's objections merely reiterate the arguments made below and are without merit.

This is Flonnory's fourth motion for postconviction relief. "In second or subsequent postconviction motions, the motion shall be summarily dismissed unless the defendant establishes: 1) that new evidence exists that creates a strong inference that he is actually innocent of the charge for which he was convicted, or 2) the existence of a new rule of constitutional law made retroactive to cases on collateral review rendered his convictions invalid."² "If it plainly appears from the motion for postconviction relief that the movant is not entitled to relief, the Court may enter an order for its summary dismissal and cause the movant to be notified."³

¹ Super. Ct. Crim. R. 62(a)(5)(ii).

² Super.Ct.Crim.R. 61(d)(2) & (5); Rule 61(i).

³ Super.Ct.Crim.R. 61(d)(5).

Flonnory seeks relief under *Fare v. Michael*.⁴ As *Fare* was decided in 1979, it does not contain “a new rule of constitutional law.” Flonnory argues that there is newly discovered evidence that a witness’s statements used against him at trial were obtained without “a parent or friendly adult present” in violation of the Fifth Amendment under *Fare*. Assuming without deciding that this is newly discovered evidence, the evidence of the circumstances of a witness’s interview does not tend to prove that Flonnory is actually innocent. Even if the evidence did meet this standard, Flonnory lacks the standing to make this argument. As the Commissioner noted, Flonnory cannot assert a violation of someone else’s Fifth Amendment rights.⁵ Flonnory fails to meet the pleading requirements of Rule 61(d)(2).

The Court holds that the Commissioner’s Report and Recommendations dated November 8, 2017 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.⁶

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

⁴ 442 U.S. 707 (1979).

⁵ *Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004) “We have adhered to the rule that a party ‘generally must assert his own legal rights and interest, and cannot rest his claim to relief on the legal rights or interests of third parties.’” (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975)).

⁶ Super. Ct. Crim. R. 62(a)(4)(iv).

IT IS SO ORDERED.



The Honorable Mary M. Johnston