

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

STATE OF DELAWARE )  
 )  
 ) ID#0803024468  
 v. )  
 )  
 DONALD K. WRIGHT, )  
 )  
 )  
 Defendant )

Submitted: November 28, 2017  
Decided: February 26, 2018

On Defendant's Third Motion for Postconviction Relief.  
**SUMMARILY DISMISSED.**

**ORDER**

Cari Chapman, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Donald Wright, James T. Vaughn Correctional Institution, Smyrna, Delaware, *pro se*.

COOCH, R.J.

This 26th day of February 2018, upon consideration of Defendant's Third Motion for Postconviction Relief, it appears to the Court that:

1. The facts of this case were set forth in this Court's earlier opinion on Defendant's first Motion for Postconviction Relief as follows:

Defendant, Donald Wright, was convicted on December 12, 2008, following a jury trial in this Court of eight counts of Rape First Degree, Rape Second Degree, Unlawful Sexual Contact First Degree and Continuous Sexual Abuse of a Child.

These charges arose from events that took place between April 2006 and November 2007, during which time Defendant sexually abused his minor stepdaughter. The victim testified at trial that Wright repeatedly engaged in oral and vaginal intercourse with her during this period of time. Defendant admitted at trial that he engaged in oral sex with the victim “four times, had ejaculated on her stomach, touched her breasts, rubbed his penis on the outside of her vagina and placed his fingers inside her vagina.”

On February 12, 2009, Defendant was sentenced to fifteen years at Level V on each count of Rape First Degree and Continuous Sexual Abuse of a Child. Defendant was also sentenced to ten years at Level V followed by five years of probation for the single count of Rape Second Degree.

Defendant appealed his case to the Delaware Supreme Court and his convictions were affirmed on August 28, 2009.<sup>1</sup>

2. In his first Motion for Postconviction Relief, Defendant asserted three grounds for postconviction relief: (1) “movant was prejudiced when counsel failed to file a timely objection pursuant to Superior Court Criminal Rule 12(b)(2) challenging the vagueness of [the] indictment . . . (2) movant was prejudiced when counsel on direct appeal failed to challenge the vagueness of [the] indictment as to counts 1 through 8; . . . and (3) movant was prejudiced when counsel on direct appeal failed to challenge the vagueness of [the] indictment as to count 38.”<sup>2</sup>
3. This Court denied Defendant’s first Motion for Postconviction Relief. That decision was affirmed by the Delaware Supreme Court.<sup>3</sup>
4. On November 16, 2016, Defendant filed his second Motion for Postconviction Relief and a Motion for Appointment of Counsel. In his second Motion for Postconviction Relief, Defendant moved for relief on the grounds that this Court lacked jurisdiction to “convict or punish” him and essentially that new evidence exists that would create a strong inference that he is actually innocent of the crimes charged.<sup>4</sup> This Court denied Defendant’s second Motion for Postconviction Relief, finding

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<sup>1</sup> *State v. Wright*, 2010 WL 11470344, at \*1 (Del. Super. July 22, 2010).

<sup>2</sup> *Id.*

<sup>3</sup> For a comprehensive review of Defendant’s first Motion for Postconviction Relief, see *State v. Wright*, 2010 WL 11470344, at \*1 (Del. Super. Ct. July 22, 2010), *aff’d*, 12 A.3d 1155 (Del. 2011).

<sup>4</sup> Def.’s Second Mot. for Postconviction Relief.

that Defendant failed to demonstrate that either of the exceptions to a subsequent motion pursuant to Del. Superior Court Criminal Rule 61(d)(2) applies in this case.<sup>5</sup>

5. Rule 61 is the remedy for defendants “in custody under a sentence of this court seeking to set aside the judgment of conviction . . . .”<sup>6</sup> This Court “must first consider the procedural requirements of Rule 61 before addressing any substantive issues.”<sup>7</sup> The procedural bars of Rule 61 include timeliness,<sup>8</sup> successiveness,<sup>9</sup> procedural default,<sup>10</sup> and former adjudication.<sup>11</sup> A motion is untimely if it is filed more than one year after the conviction is finalized or defendant asserts a new constitutional right that is retroactively applied more than one year after it is first recognized.<sup>12</sup> A motion is successive if it is a “second or subsequent motion.”<sup>13</sup> If any of these bars apply, the movant must show entitlement to relief under Rule 61(i)(5).<sup>14</sup> The contentions in a Rule 61 motion must be considered on a “claim-by-claim” basis.<sup>15</sup>
6. As this is Defendant's third motion for postconviction relief, Rule 61(d)(2) pertaining to successive motions is applicable in this matter. Under Rule 61(d)(2), in order for the Court to consider successive postconviction motions, the motion must either

(i) plead[] with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted; or (ii) plead[] with particularity a claim that a new rule of constitutional law, made retroactive . . . applies to the movant's case and renders the conviction . . . invalid.<sup>16</sup>

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<sup>5</sup> *State v. Wright*, 2017 WL 781559, at \*1 (Del. Super. Ct. Feb. 27, 2017).

<sup>6</sup> Del. Super. Ct. Crim. R. 61.

<sup>7</sup> *State v. Stanford*, 2017 WL 2484588, at \*2 (Del. Super. Ct. June 7, 2017) (quoting *Bradley v. State*, 135 A.3d 748, 756 (Del. 2016)).

<sup>8</sup> *Id.* at 2 (citing Del. Super. Ct. Crim. R. 61(i)(1)).

<sup>9</sup> *Id.* at 2 (citing Del. Super. Ct. Crim. R. 61(i)(2)).

<sup>10</sup> *Id.* at 2 (citing Del. Super. Ct. Crim. R. 61(i)(3)).

<sup>11</sup> *Id.* at 2 (citing Del. Super. Ct. Crim. R. 61(i)(4)).

<sup>12</sup> Del. Super. Ct. Crim. R. 61(i)(1).

<sup>13</sup> Del. Super. Ct. Crim. R. 61(i)(2).

<sup>14</sup> *Stanford*, WL 2484588, at \*2.

<sup>15</sup> *State v. Reyes*, 155 A.3d 331, 342 n.15 (Del. 2017) (holding that “Rule 61 analysis should proceed claim-by-claim, as indicated by the language of the rule.”).

<sup>16</sup> Del. Super. Ct. Crim. R. 61(d)(2)(i)&(ii).

7. Neither test would permit Defendant to overcome the Rule 61(d)(2) procedural bar concerning successive motions. Defendant essentially argues, pursuant to 61(i)(5), that no procedural bars apply because this Court lacked jurisdiction to try his case. Similar to his first and second motion for postconviction relief, Defendant again challenges the validity of his indictment. He contends that “Superior Court lacked jurisdiction to try or convict defendant pursuant to jurisdictional defect from the inception” because “an essential element has been omitted from the indictment[.]”<sup>17</sup> This Court has jurisdiction to try Defendant’s case and his argument fails to overcome any of the procedural bars under Rule 61. Moreover, the exceptions to the successive motion procedural bar contemplated by Rule(d)(2)(i)&(ii) are not implicated as Defendant has failed to plead with any particularity that new evidence exists that creates a strong inference of actual innocence or that a new rule of constitutional law exists that was made retroactive to his case..
8. Accordingly, as Defendant has failed to overcome the procedural bars to successive motions for postconviction relief, Defendant's second Motion for Postconviction Relief is summarily dismissed, as required by Rule 61(d)(2).

Therefore, Defendant’s Third Motion for Postconviction Relief is **SUMMARILY DISMISSED.**

**IT IS SO ORDERED.**



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Richard R. Cooch, R.J.

cc: Prothonotary  
Investigative Services

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<sup>17</sup> Def.'s Third Mot. for Postconviction Relief at 3-5.