

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
JUDGE

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

November 26, 2018

State Mail - S449
Jamar K. Thompson
SBI #00451132
Sussex Correctional Institution
Rt #3, Box 500
Georgetown, DE 19947

Re: *State v. Thompson,*
ID #1209018130

FILED PROTHONOTARY
SUSSEX COUNTY
2018 NOV 26 A 11:26

Dear Mr. Thompson,

On September 27, 2018, you filed a Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). This is the Court's decision denying your motion.

I. HISTORY

In 2013, you pled guilty to delivery of heroin, possession with intent to deliver heroin, possession of a firearm by a person prohibited, and possession of a firearm during the commission of a felony. In way of punishment, you received the three year minimum mandatory sentence on the possession of a firearm during the commission of a felony to be followed by Level 5 time on the drug offenses, suspended upon your completion of the Key Program for the Crest Program at Level 4 and followed by Level 3 probation.

Subsequently, you picked up new drug offenses and you were found in violation of probation on July 10, 2015. You were credited for fifty-four days served at Level 5 and sentenced to Level 4 home confinement, followed by Level 3 probation.

You did well at Level 4 home confinement and your sentence was modified on May 13, 2016, to remove home confinement.

You were then found in violation of probation after a contested hearing held on September 8, 2017, for knowingly maintaining a firearm in your vehicle. A firearm owned by your girlfriend was found under the passenger front seat of the car you were driving. The gun was accessible to you and you acknowledged your fingerprints would be found on it. On October 26, 2017, you were sentenced to three and a half years at Level 5, followed by Level 4 work release and Level 4 home confinement, followed by Level 3 probation.

You appealed the violation of probation finding and sentence. The Supreme Court affirmed this Court's ruling on July 24, 2018. *Thompson v. State*, 192 A.3d 544 (Del. 2018).

II. MERITS

This Court has previously held that Rule 61 proceedings are for the purposes of attacking, in order to set aside, a judgment of conviction. Here, you attack the sentence that the Court imposed for your violation of probation and not the underlying conviction. Your motion must be summarily dismissed "as it is an inappropriate vehicle for attacking the sentence imposed for [your] violation of probation." *State v. Berry*, 2007 WL 2822928, at *1 (Del. Super. Ct. Sept. 25, 2007).

In the alternative, the Court notes that the Delaware Supreme Court has held a defendant has no constitutional right to effective assistance of counsel at a violation of probation hearing. *Schoolfield v. State*, 2013 WL 2807471, at *1 (Del. July 18, 2013) ("In order to establish a claim of constitutionally ineffective assistance of counsel, there must first exist a constitutional right to the effective assistance of counsel. Because there is no constitutional right to counsel at a VOP hearing, [defendant's] purported ineffective assistance of counsel claim.... must fail."). Your present motion

is comprised solely of claims of ineffective assistance of counsel at your violation of probation hearing. Based upon the holding in *Schoolfield*, the merits of these claims need not be addressed by the Court.

III. CONCLUSION

The present Rule 61 Motion attacking the performance of counsel at your violation of probation hearing is summarily denied.

IT IS SO ORDERED.

Very truly yours,



T. Henley Graves

oc: Prothonotary

cc: Adam Gelof, Esquire

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