SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
	)	
v.	)	Case I.D Nos.: 1202006406
	)	1201018253
	)	1402013417
DAVID YARBOROUGH,	)	
	)	
Defendant.	)	

ORDER

Submitted: January 10, 2020
Decided: April 21, 2020

Upon Consideration of the Commissioner's Report and Recommendation that Defendant's Motion for Postconviction Relief Should Be Denied,

ADOPTED.

David Yarborough, James T. Vaughn Correctional Center, Smyrna, Delaware. *Pro se.*

John W. Downs, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware. *Attorney for the State.*

MEDINILLA, J.

AND NOW TO WIT, this 21st day of April, 2020, upon consideration of Defendant David Yarborough's ("Defendant") Motion for Postconviction Relief, the Commissioner's Report and Recommendation that Defendant's Motion for Postconviction Relief Should Be DENIED, Defendant's Appeal from Commissioner's Findings of Fact and Recommendations, Defendant's Letter, the sentence imposed upon Defendant, and the record in this case, it appears to the Court that:

1. Defendant has an extensive procedural history in this Court, as is laid out in this Court's recent decision denying Defendant's Motion for Correction of an Illegal Sentence.[1] On January 25, 2012, Defendant was arrested and charged with twenty-three offenses including Theft Greater than $100,000, Burglary Second Degree, and Selling Stolen Property.[2] On February 13, 2012, Defendant was again arrested and charged with Burglary Second Degree, Theft of a Senior, and Conspiracy Second Degree.[3] On October 9 2012, Defendant was arrested on two charges each of Attempted Theft and Insurance Fraud.[4] On February 20, 2014,

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[1] *See generally State of Delaware v. David Yarborough*, No. 1201018253, 2020 WL 502386 (Del. Super. Ct. Jan. 30, 2020). For the purposes of this motion, the Court will not reiterate Defendant's procedural history in such detail.
[2] *State of Delaware v. David T. Yarborough*, Crim. ID No. 1201018253 [hereinafter "#1201018253"]. On April 2, 2012, Defendant was indicted. #1201018253, D.I. 5.
[3] *State of Delaware v. David T. Yarborough*, Crim. ID No. 1202006406 [hereinafter "#1202006406"]. On April 2, 2012, Defendant was indicted. #1202006406, D.I. 4.
[4] *State of Delaware v. David T. Yarborough*, Crim. ID No. 1210003158 [hereinafter "#1210003158"].

Defendant was again arrested and charged with two counts each of Attempted Assault First Degree, Criminal Solicitation Second Degree, and Stalking.[5]

2. On April 9, 2015, this Court held a plea hearing as to all four cases.[6] Defendant pled guilty to two charges of Attempted Assault First Degree and two charges of Burglary Second Degree.[7] This Court ordered a PSI and scheduled the matter for sentencing.

3. On June 1, 2015, the State filed a Motion to Declare Defendant a Habitual Offender under 11 *Del. C.* §§ 4214(a) and 4215(b).[8] On October 12, 2015, the Court granted the State's Motion and declared Defendant a habitual offender under 11 *Del. C.* § 4214(a).[9] On December 10, 2015,[10] the Court imposed the minimum mandatory sentence of twenty years of incarceration.[11]

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[5] *State of Delaware v. David T. Yarborough*, Crim. ID No. 1402013417 [hereinafter "#1402013417"]. On April 28, 2014, Defendant was indicted. #1402013417, D.I. 4.
[6] *See* Defendant's Plea Hearing at #1402013417, D.I. 29; #1202006406, D.I. 71; #1201018253, D.I. 103. [hereinafter "Def.'s Plea"].
[7] *See* Def.'s Plea.
[8] *See* #1402013417, D.I. 30 [hereinafter "HO Mot."].
[9] *See* Order Granting State's Motion to Declare Defendant a Habitual Offender at #1402013417, D.I. 38 [hereinafter "Order"].
[10] On October 26, 2015, Defendant's sentencing was continued to December 10, 2015. *See* #1402013417, D.I. 39; #1202006406, D.I. 99; #1201018253, D.I. 109.
[11] Defendant was sentenced as follows: (1) For the first Assault First Degree charge, he received ten years at Level V, suspended after two years at Level V, for eight years at Level IV DOC Discretion, suspended after nine months at Level IV DOC Discretion, for two years at Level III; (2) For the second Assault First Degree Charge, he received ten years at Level V, suspended after two years at Level V, for two years at Level III; (3) For the first Burglary Second Degree charge, he was declared a Habitual Offender, and was sentenced pursuant to 11 *Del. C.* § 4214(a) for this charge to eight years at Level V; and (4) For the second Burglary Second Degree charge, he was declared a Habitual Offender, and was sentenced pursuant to 11 *Del. C.* § 4214(a) for this charge to eight years at Level V. *See* Sentencing Calendar: Defendant Sentenced at #1402013417, D.I. 40; #1202006406, D.I. 99; #1201018253, D.I. 109 [hereinafter Def.'s

4. On January 27, 2017, Defendant filed his first Motion for Postconviction Relief[12] and a Motion for Appointment of Counsel.[13] Between December 2017 and June 2018, Defendant also filed four additional Amended Motions for Postconviction Relief.[14] On August 21, 2019, Defendant filed a Memorandum in Support of his Motion for Postconviction Relief.[15]

5. His motion was referred to a Superior Court Commissioner for proposed findings of fact and conclusions of law, in accordance with 10 *Del. C.* § 512(b) and Superior Court Criminal Rule 62.[16] On October 2, 2019, Commissioner Mayer filed a Report recommending that Defendant's Motion for Postconviction Relief be denied.[17] On October 15, 2019, Defendant appealed the Commissioner's Recommendation.[18]

6. On January 10, 2020, Defendant filed an additional letter to this Court

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Sentence].

[12] *See* #1402013417, D.I. 61; #1202006406, D.I. 114; #1201018253, D.I. 125.

[13] *See* #1402013417, D.I. 62; #1202006406, D.I. 115; # 1201018253, D.I. 126.

[14] *See* #1402013417, D.I. 83, 85; #1202006406, D.I. 133, 136; #1201018253, D.I. 143, 144; *see also* #1402013417, D.I. 95; *see also* #1202006406, D.I. 144; #1201018253, D.I. 152; *see also* #1402013417, D.I. 100. On May 25, 2018, Commissioner Mayer filed a letter indicating that Defendant's various Motions for Postconviction Relief had "created confusion with respect to the arguments being presented," and requested Defendant to comply to a new briefing schedule to consolidate his arguments into "one singular motion/memorandum[.]" #1402013417, D.I. 99; #1202006406, D.I. 149; #1201018253, D.I. 155.

[15] *See* #1402013417, D.I. 118; #1202006406, D.I. 167; #1201018253, D.I. 171.

[16] DEL. SUPER. CT. CRIM. R 62(a)(5).

[17] #1402013417, D.I. 122; #1202006406, D.I. 171; #1201018253, D.I. 175.

[18] #1402013417, D.I. 124; #1202006406, D.I. 173; #1201018253, D.I. 177 [hereinafter "Def.'s Appeal"].

reiterating prior claims raised in his Rule 61 and Rule 35 filings.[19] In addressing Defendant's most recent Rule 35 motion,[20] the Court considered this letter as a supplement to that motion and his pending Rule 61 appeal.[21] The Court does the same here.

7. A judge "may accept, reject or modify, in whole or in part, the findings of fact or recommendations made by the Commissioner."[22] The Court conducts a *de novo* review "of those portions of the report or specified proposed findings or recommendations to which an objection is made."[23]

8. First, as fully set out in the Commissioner's Report, Defendant's Motion is procedurally barred under Superior Court Criminal Rule 61(i)(3) and (4). Although the motion is "couched as ineffective assistance of counsel claims,"[24] the arguments echo prior arguments raised regarding the Court's determination that he could be sentenced as a Habitual Offender. The Court finds that such arguments

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[19] #1402013417, D.I. 128.

[20] On October 9, 2019, Defendant filed his fifth "Motion for Correction of an Illegal Sentence." *See generally* #1402013417, D.I. 123; #1202006406, D.I. 172; #1201018253, D.I. 176. Prior to that motion, Defendant filed four additional Motions for Correction of Sentence. *See* #1402013417, D.I. 56; #1202006406, D.I. 112; #1201018253, D.I. 122; *see also* #1402013417, D.I. 58; *see also* #1402013417, D.I. 77; #1202006406, D.I. 127; #1201018253, D.I. 138; *see also* #1402013417, D.I. 94; #1202006406, D.I. 143; #1201018253, D.I. 151. Defendant's Motions were denied. *See* #1402013417, D.I. 59; #1202006406, D.I. 113; #1201018253, D.I. 124.

[21] *See generally State of Delaware v. David Yarborough*, No. 1201018253, 2020 WL 502386 (Del. Super. Ct. Jan. 30, 2020) (order denying Defendant's Motion for Correction of an Illegal Sentence).

[22] DEL. SUPER. CT. CRIM. R 62(a)(5)(iv).

[23] *Id.*

[24] *State v. Yarborough*, No. 1201018253, 2019 WL 4954959, at *4 (Del. Super. Ct. Oct. 2, 2019)

have been considered and rejected.[25] For this reason, Defendant's Motion is barred under Superior Court Criminal Rule 61(i)(4).[26] Also, the remainder of Defendant's Motion challenges the award of restitution. The Court finds that such claims have been waived, where Defendant failed to present them through the trial court proceedings or on appeal. For this reason, Defendant's motion is also barred under Superior Court Criminal Rule 61 (i)(3). Furthermore, the Commissioner's Report further determined that Defendant's arguments did not meet any exceptions to these procedural bars.[27] This Court agrees.

9. Next, the Court addresses Defendant's Appeal.[28] Superior Court Criminal Rule 62(a)(5) permits the Court to refer case-dispositive motions, including postconviction relief motions, to a Superior Court Commissioner for "proposed findings of fact and recommendations for the disposition, by a judge, of any such matter."[29] After the Commissioner issues a report, "any party may serve and file written objections" to the report within ten days.[30] A party failing to comply with this ten-day time limit for appeal may foreclose that party's ability to object to the Commissioner's report.[31] The Court considers Defendant's appeal as a timely

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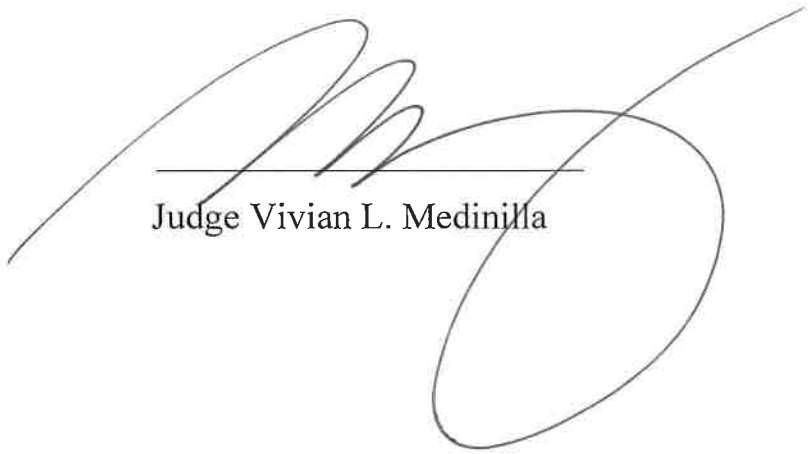
[25] *See* Order.
[26] *Yarborough*, 2019 WL 4954959, at *4.
[27] *See generally id.*
[28] *See* Def.'s Appeal.
[29] DEL. SUPER. CT. CRIM. R 62(a)(5).
[30] *Id.* at 62(a)(5)(ii).
[31] DEL. SUPER. CT. CRIM. R 62(b).

objection.[32] In considering his appeal, however, the Court finds that Defendant's Appeal does not raise additional arguments, but instead only reiterates points made in his initial Motion. These have been considered and rejected.

NOW, WHEREFORE, after a careful and *de novo* review of the record in this action, and for the reasons stated in the Commissioner's Report and Recommendation dated October 2, 2019, the well-reasoned Commissioner's Report and Recommendations are adopted by the Court and Defendant's Motion for Postconviction Relief is **DENIED**.

IT IS SO ORDERED.



Judge Vivian L. Medinilla

oc: Prothonotary
cc: Defendant
Department of Justice & Investigative Services

[32] *See* Def.'s Appeal.