

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 Plaintiff,)
)
 v.)
)
 LUTHER DICKSON,)
)
 Defendant.)

Cr. ID. No. 93008966DI

Submitted: September 25, 2020
Decided: October 15, 2020

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE SUMMARILY DISMISSED**

Susan Purcell, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Luther Dickson, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se*.

PARKER, Commissioner

This 15th day of October 2020, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court as follows:

BACKGROUND AND PROCEDURAL HISTORY

1. In 1993, Defendant Luther Dickson was indicted on the charges of Burglary First Degree, Unlawful Sexual Intercourse First Degree, Unlawful Sexual Penetration Third Degree and Kidnapping First Degree. He was reindicted on these same charges and two additional charges of Robbery First Degree and Unlawful Sexual Contact in the Third Degree.

2. The charges arose out of an incident that occurred on the night of March 6-7, 1993 in which Dickson forced his way into an elderly woman's home, sexually assaulted her, stole her money, and tore her telephone lines from the wall so she would be unable to call for help.

3. The first jury trial in this case began on September 13, 1993. At the conclusion of the first trial, the jury found Dickson guilty of Unlawful Sexual Penetration Third Degree, Unlawful Imprisonment Second Degree (a lesser-included offense of Kidnapping), and Robbery First Degree. The jury was unable to reach a verdict on the Unlawful Sexual Intercourse First Degree and Burglary First Degree charges and a mistrial was declared as to those counts.

4. The second jury trial in this case was conducted on December 12-16, 1993. On December 16, 1993, a second jury found Dickson guilty of Unlawful Sexual Intercourse in the First Degree and the lesser-included offense Burglary in the Second Degree.

5. On February 4, 1994, Dickson was sentenced. He was sentenced to life imprisonment for the Unlawful Sexual Intercourse First Degree conviction. He was sentenced to an additional ten years of incarceration on the remaining convictions, followed by probation.

6. In 1994, Dickson filed an unsuccessful direct appeal to the Delaware Supreme Court.¹

7. In 2010, Dickson filed an unsuccessful Rule 61 Motion for Postconviction Relief.²

8. On November 26, 2018, Dickson filed a second motion for postconviction relief. The United States Department of Justice, in a letter dated December 18, 2017, advised that the FBI had determined that its expert analyst on microscopic hair comparison evidence (“MHC evidence”), Federal Agent Michael Malone, may have overstated the results of its examination by testifying to the conclusiveness of microscopic hair samples in making an identification.

¹ *Dickson v. State*, 1994 WL 632533 (Del.).

² See, Superior Court Docket Nos. 30, 42, & 44.

9. Counsel was appointed to represent Dickson on his second Rule 61 motion to determine whether the MHC evidence at issue prejudiced Dickson's case in light of the Department of Justice's letter raising this new revelation.

10. On June 28, 2019, assigned counsel filed a Motion to Withdraw as Postconviction Counsel pursuant to Superior Court Criminal Rule 61(e)(7). In that motion to withdraw, Dickson's Rule 61 counsel represented that he had thoroughly reviewed the transcripts of the proceedings and the record in this case and that after undertaking this thorough analysis, counsel determined that Dickson did not have any meritorious basis to raise a claim for relief.³

11. Counsel explained that the new MHC revelations were not helpful to Dickson because MHC testimony and the report were only admitted at Dickson's first trial. The jury was unable to reach a verdict as to the Unlawful Sexual Intercourse First Degree and Burglary First Degree charges in that first trial. The MHC evidence was not used, and was not mentioned to the jury in any fashion, during the second trial. The FBI agent, Agent Michael Malone, did not testify at Dickson's second trial nor was the MHC report admitted at the second trial. At the second trial, Dickson was convicted of Unlawful Sexual Intercourse First Degree

³ See, Superior Court Docket Nos. 54, 55, 56- Defendant's Rule 61 counsel's Motion to Withdraw along with the accompanying Memorandum in Support of Motion to Withdraw and appendix.

for which he is serving a life sentence. He was also convicted of Burglary in the Second Degree.

12. Rule 61 Counsel concluded that the new evidence that led to the filing of Dickson's second Rule 61 motion, that the FBI overstated the results of its examination of microscopic hair samples, played no part whatsoever in Dickson's conviction of Unlawful Sexual Intercourse First Degree, for which he is serving a life sentence. The second trial was untainted by FBI misconduct. Accordingly, counsel concluded that the MHC evidence claims were without merit under the facts and circumstances of this case and sought to withdraw as Rule 61 Counsel.

13. Prior to filing the Motion to Withdraw, and again at the time of the filing of the Motion to Withdraw, Dickson's Rule 61 counsel advised Dickson that he had the right to file a response thereto within 30 days, if Dickson objected to the motion.⁴

14. Specifically, by letter dated June 28, 2019, Dickson's Rule 61 counsel stated:

I have informed Mr. Dickson, and do so again by copy of this letter, that pursuant to Superior Court Criminal Rule 61(e)(7), he has 30 days in which to file a Response to my filing [Motion to Withdraw]. I further advise him that he should timely send his Response to my office, and I will file it for him.⁵

⁴ See, Superior Court Docket No. 54- letter dated June 28, 2019 advising Dickson of the Motion to Withdraw and having 30 days to file a response thereto.

⁵ *Id.* (bold emphasis in original letter).

15. Dickson chose not to file a response to Rule 61 counsel's motion to withdraw.

16. Following a full, thorough and careful review of Dickson's second Rule 61 motion, his counsel's motion to withdraw, and the record, the undersigned Superior Court Commissioner recommended the denial of Dickson's second Rule 61 motion.⁶

17. A copy of the Commissioner's Report and Recommendation recommending the denial of Dickson's second Rule 61 motion was provided to Dickson. Dickson was permitted to file any objections/exceptions to the Report.⁷ He chose not to do so.

18. After the ten-day time period for filing objections to the Report elapsed, the Superior Court judge conducted a careful and *de novo* review of the record and the Commissioner's Report and Recommendation. Following that careful and *de novo* review, on October 16, 2019, the Superior Court entered an Order adopting the Commissioner's Report and Recommendation and denying Dickson's second Rule 61 motion.⁸

⁶ See, *State v. Dickson*, 2019 WL 473830 (Del.Super.).

⁷ Pursuant to 10 *Del. C.* § 512(b) and Rule 62, any objections to the Report needed to be filed within 10 days after the filing of the Report.

⁸ Superior Court Docket No. 59- Superior Court Order dated October 16, 2019 denying Dickson's second Rule 61 motion.

19. Dickson was permitted to appeal the Superior Court's denial of his second Rule 61 motion to the Delaware Supreme Court.⁹ He chose not to do so.

DICKSON'S THIRD RULE 61 MOTION

20. Almost one year after the Superior Court's Order of October 16, 2019 denying Dickson's second Rule 61 motion, on September 14, 2020, Dickson filed another Rule 61 motion. In this third Rule 61 motion, Dickson objects to his counsel's decision to move to withdraw in the second Rule 61 motion, and objects to and challenges the Court's decision in his second Rule 61 motion that the MHC evidence claims were without merit.

21. Dickson does not raise anything new or recently discovered. Dickson's third Rule 61 motion is merely a belated attempt to object to his counsel's motion to withdraw from his prior Rule 61 motion and to oppose the Court's denial of his prior motion.

22. Dickson had the opportunity to raise his objections in his second Rule 61 motion. Filing another Rule 61 motion is not a substitute for, and is not a proper vehicle, for challenging the denial of a previous Rule 61 motion.

23. Dickson was required to object to the issues raised in his second Rule 61 motion in that motion. Dickson was permitted an opportunity to object to his Rule

⁹ Dickson was required to file an appeal within 30 days of the Superior Court's October 16, 2019 Order as required by Superior Court Criminal Rule 61(k) and Delaware Supreme Court Rule 6(a)(iv). He did not appeal within the required time period or at any time thereafter.

61 counsel's motion to withdraw within 30 days from his counsel's June 28, 2019 letter advising him of that right and opportunity. Dickson elected not to object at that time thereby waiving his right to do so.

24. Dickson had an opportunity to file whatever exceptions/objections he so desired to the Commissioner's September 24, 2019 Report and Recommendation on the second Rule 61 motion. Dickson elected not to do so thereby waiving his right to object to that Report.

25. Dickson had an opportunity to file an appeal to the Delaware Supreme Court within 30 days from the Superior Court's October 16, 2019 Order denying his second Rule 61 motion, if he genuinely believed the Court's decision was incorrect in any regard. Dickson elected not to do so. Dickson waived his right to challenge the Superior Court's determination that the MHC evidence claims at issue in this case are without merit.

26. Dickson is not permitted to file another Rule 61 motion, re-raising the same issues raised in a prior Rule 61 motion, as a substitute for taking an appeal of the prior Rule 61 motion. The extent to which the MHC evidence affected Dickson's case was adjudicated in his second Rule 61 motion, he was permitted to raise any challenges he so desired in that motion, and he elected not to appeal that decision. The Superior Court's decision on these claims are now final and the matter is at an end.

27. Rule 61 mandates that 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 the defendant is actually innocent of the charges 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.¹⁰ 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.¹¹

28. In this motion, Dickson does not claim the existence of any new evidence or that there is a new rule of law that would render his conviction invalid. Instead, Dickson is seeking to contest the decisions made in his second Rule 61 motion by way of re-raising the claims in a third Rule 61 motion.

29. In accordance with the mandates of Rule 61, Dickson's third Rule 61 motion should be summarily dismissed since he failed to meet the pleading requirements allowing him to proceed with this motion.

30. In addition to failing to overcome the threshold pleading requirements allowing him to proceed with this motion, Dickson's motion is also procedurally

¹⁰ Super.Ct.Crim.R. 61(d)(2) & (5); and Rule 61(i).

¹¹ Super.Ct.Crim.R. 61(d)(5).

barred by Superior Court Criminal Rule 61(i)(4). The claims raised herein have already been resolved in Dickson's second Rule 61 motion.

31. Rule 61(i)(4) precludes this Court's consideration of this motion because the claims at issue were already formally adjudicated in Dickson's second Rule 61 motion. This claim cannot now be re-stated, refined or re-raised in order to again seek review.¹² Accordingly, the claims raised herein are barred and this motion should be summarily dismissed. Filing a new Rule 61 motion objecting to the Superior Court's decision in a prior Rule 61 motion is not a permissible substitute for taking an appeal from the Superior Court's decision in the prior Rule 61 motion.¹³

32. Dickson has failed to meet the pleading requirements for proceeding with this motion and, therefore, this motion should be denied. Dickson's motion is also procedurally barred.

¹² *Johnson v. State*, 1992 WL 183069, *1 (Del.); *Duhadaway v. State*, 877 A.2d 52 (Del. 2005).

¹³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

For all of the foregoing reasons, Dickson's Motion for Postconviction Relief should be SUMMARILY DISMISSED.

IT IS SO RECOMMENDED.



Commissioner Lynne M. Parker

cc: Prothonotary
Patrick J. Collins, Esquire