IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
	)	I.D. Nos. 1811007923 & 1912019316
v.	)	
	)	
	)	
EDWARD BENSON,	)	
	)	
Defendant.	)	

Submitted: April 26, 2022
Decided: June 6, 2022

Upon Defendant's Motion for Postconviction Relief and Amended Motion for Postconviction Relief,
DENIED.

ORDER

Edward Benson, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna, DE 19977, *pro se*.

Sehr M. Rana, Esquire, Deputy Attorney General, DEPARTMENT OF JUSTICE, 820 North French Street, Wilmington, DE 19801, Attorney for the State.

WHARTON, J.

This 6th day of June, 2022, upon consideration of Defendant Edward Benson's ("Benson") timely *pro se* Motion for Postconviction Relief ("MPCR"),[1] and Amended Motion for Postconviction Relief ("AMPCR"),[2] counsel's affidavit,[3] the State's Response to Benson's Motion for Postconviction Relief and Amended Motion for Postconviction Relief,[4] Benson's Reply,[5] and the record in this matter, it appears to the Court that:

1. Edward Benson was indicted on April 29, 2019.[6] Elise Wolpert, Esquire and Eugene J. Maurer, Esquire were appointed to represent him. On August 16, 2019, counsel filed a Motion to Sever Offenses,[7] a Motion to Suppress Cell Phone Evidence,[8] and a Motion to Suppress Evidence Seized Pursuant to Administrative Search.[9] Prior to the scheduled date for the suppression hearing, trial counsel wrote to the Court advising it that it was clear to them that Benson was rejecting their advice and wished to represent himself.[10] On September 10, 2019,

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[1] D.I. 78. (Docket Item numbers refer to I.D. No. 181007923).
[2] D.I. 83.
[3] D.I. 86.
[4] D.I. 87.
[5] D.I. 88.
[6] D.I. 5.
[7] D.I. 15.
[8] D.I. 16.
[9] D.I. 17.
[10] D.I. 18.

the Court held a hearing to address Benson's request to represent himself.[11] Benson's request was granted and he was allowed until September 30th to file any motions.[12]

2. On September 25th, Benson filed his own Motion to Suppress Evidence Seized Pursuant to Administrative Search.[13] Benson's motion was a considerably more expansive version of counsel's motion. Also on September 25th, Benson filed a Motion to Compel the State to provide him with the identity of a confidential informant,[14] and a Motion to Dismiss.[15] On October 29th, Benson filed a request for a "Brady Report" requesting a report disclosing whether any of six listed probation officers and police officers involved in his case had proven to be dishonest.[16] Specifically he claimed alleged that any alleged observation of him by law enforcement conducting a drug sale was false.[17] On November 8th, Benson filed a Supplemental Motion to Suppress Evidence arguing that the State had failed to respond to some of his arguments in his original suppression motion and, as a result, the evidence should be suppressed.[18]

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[11] D.I. 20.
[12] *Id.*
[13] D.I. 21.
[14] D.I. 22.
[15] D.I. 23.
[16] D.I. 28.
[17] *Id.*
[18] D.I. 29.

3. A hearing was held on November 15, 2019 at which Benson represented himself. Benson's motion to identify confidential informants was withdrawn and his motion to dismiss was denied.[19] Also, Benson's concerns regarding his request for a "Brady Report" were resolved.[20] Other pending matters were deferred for a hearing to be held on a future date.[21]

4. Prior to that hearing, Benson submitted an Addendum (After Viewing Video Evidence) to his Motion to Suppress Evidence Seized Pursuant Administrative Search.[22] The Addendum detailed Benson's observations from a home security video of the administrative search and reiterated his request to suppress evidence from that search.[23] Benson filed another document captioned Addendum to Argument #2 Probation and Parole Did NOT Have Reasonable Suspicion to Search on December 27, 2019.[24] On January 22, 2020, Benson filed a Motion Requesting a Franks Hearing alleging that a Probation and Parole Officer "knowingly and intentionally, or with reckless disregard for the truth, included false

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[19] D.I. 31.
[20] *Id.*
[21] *Id.*
[22] D.I. 35.
[23] *Id.*
[24] D.I. 40.

statements in his Arrest/Incident Report" in order to obtain approval to conduct an administrative search.[25]

5. A suppression hearing was held on January 24, 2020.[26] Prior to the hearing, the Court received a letter from the attorney for Kathleen V. Gott ("Gott"), a witness Benson wanted to call to testify at the hearing.[27] The attorney advised the Court that, if called, Gott would invoke her Fifth Amendment right against self-incrimination.[28] At the conclusion of the hearing, the Court denied Benson's Motion to Suppress Evidence Seized Pursuant to Administrative Search and Motion to Suppress Cell Phone Evidence.[29]

6. On February 7, 2020, Benson filed another motion to suppress evidence that was seized during the administrative search based on what he argued were inconsistencies in the testimony of State's witnesses at the suppression hearing.[30] On February 13th, Benson wrote to the Court asking that counsel be appointed to represent him.[31] The Court gave Benson the option to have prior counsel reappointed or to represent himself.[32] On March 3, 2020, Benson accepted prior

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[25] D.I. 43.
[26] D.I. 46.
[27] D.I. 44.
[28] *Id.*
[29] D.I. 46.
[30] D.I. 47.
[31] D.I. 48.
[32] D.I. 50

counsel's reappointment.[33] On May 31, counsel moved to withdraw again, citing a breakdown in the relationship between Ms. Wolpert and Benson.[34] On June 14, 2021, that motion was denied after an extended discussion between the Court, counsel, and Benson during which Benson agree to work cooperatively with Ms. Wolpert.[35]

7. Benson pled guilty on July 26, 2021, to Possession of a Firearm by Person Prohibited ("PFBPP") and Act of Intimidation. As part of the plea agreement, the State dropped all of the other charges pending against Benson and agreed to drop charges against Benson's girlfriend Lashania Baynard and his son J'Qwan Benson.[36] The plea agreement contemplated an agreed upon sentence for the PFBPP charge of 15 years at Level V suspended after 10 years for 12 months at Level IV, suspended after six months for 12 months at Level III.[37] For the Act of Intimidation charge, the sentencing agreement called for eight years at Level V suspended for 12 months at Level III.[38] The Court imposed the agreed upon recommended sentences.[39]

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[33] D.I. 51.
[34] D.I. 58.
[35] Tr. Hrg., at 13-16 (June 14, 2021), D.I. 72.
[36] Tr. Plea Colloquy (July 26, 2021), at 5. D.I. 71.
[37] D.I. 64.
[38] D.I. 64.
[39] D.I. 71 at 22.

8. Benson filed this timely first MPCR pursuant to Superior Court Criminal Rule 61 *pro se* on January 4, 2022,[40] accompanied by a Motion for Appointment of Counsel.[41] On January 20, 2022, the Court issued an Order to Expand the Record,[42] and denied the Motion for Appointment of Counsel.[43] On January 31, 2022, Defendant filed an Amended MPCR ("AMPCR").[44] Ms. Wolpert submitted an affidavit in response to Benson's MPCR and AMPCR on March 29, 2022.[45] Benson replied to the State's Response on May 26, 2022.[46]

9. In the MPCR, Benson makes three claims for relief. First, he alleges ineffective assistance of counsel ("IAC") stating, "Counsel failed to move suppress evidence due to a warrantless police search. Counsel failed to move to suppress coerced confession. Counsel failed to raise confrontation/hearsay issue. Counsel had a conflict of interest, per counsel. Frank's issue."[47] Second, he claims he was coerced into a guilty plea and confession, stating "Counsel colluded with the State to use my son as leverage to coerce me into entering a guilty plea at the last minute

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[40] D.I. 78.
[41] D.I. 79.
[42] D.I. 81.
[43] D.I. 82.
[44] D.I. 83.
[45] D.I. 86.
[46] D.I. 88.
[47] D.I. 78.

during my Final Case Review."[48] Third, he argues that there were multiple *Brady* violations, stating "The State withheld the fact that officers used a body-cam during the search of my residence. My counsel, Ms. Wolpert, withheld transcripts from the body-cam, and the fact that she knew about the body-cam until AFTER the plea was entered."[49] Benson filed the AMPCR on January 31, 2022 supplementing his original IAC claims.[50] In the AMPCR, he alleges, "Counsel failed to investigate defendant's defense by failing to obtain transcripts of home security audio on which detective is heard admitting to finding evidence. Counsel failed to attempt to question/interview only witness, Kathleen Gott."[51] Additionally, Benson argues, "Counsel failed to move the Court to suppress the seized evidence based on the Randolph issue[.]"[52]

10. On March 29, 2022, Ms. Wolpert filed an affidavit in which she disputes the claimed basis for the IAC claims, denies any collusion with the State to coerce Benson's guilty plea, and asserts there were no *Brady* violations.[53]

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[48] *Id.*
[49] *Id.*
[50] D.I. 83.
[51] *Id.*
[52] *Id.*
[53] D.I. 86.

11. The State responded on April 27, 2022.[54] In its response, the State conceded that Benson's MPCR, as amended, is timely, not repetitive, and not subject to the bars of Rules 61(i)(3) and (4) since it alleges IAC.[55] The State argues that when Benson voluntarily entered his guilty plea, he waived any defects that occurred prior to the entry of that plea.[56] Further, the State argues that Benson fails to articulate how counsel's performance fell below an objective standard of reasonableness.[57] He also fails to establish a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.[58] Turning to Benson's claim that his guilty plea and confession were coerced, the State contends that claim is factually without merit and belied by Benson's statement in his plea colloquy.[59] Regarding Benson's claims that his counsel withheld transcripts from body-worm cameras from him, the State represents that there were no such transcripts because the State Police did not wear body-worn cameras.[60] Further, an audio recording of an on-scene statement made by the defendant was provided to Benson's counsel in discovery.[61]

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[54] D.I. 87.
[55] *Id.,* at 8-9.
[56] *Id.,* at 11-14.
[57] *Id.*
[58] *Id.*
[59] *Id.,* at 14-16.
[60] *Id.,* at 16-17.
[61] *Id.*

12. Benson submitted a reply to the State's response on May 26, 2022.[62] In it he reiterates his claim that a Probation and Parole Officer intentionally, or with reckless disregard for the truth provided false information in order to obtain approval for an administrative search as well as expanding on his other arguments.[63]

13. Before addressing the merits of a defendant's motion for postconviction relief, the Court must first apply the procedural bars of Superior Court Criminal Rule 61(i).[64] If a procedural bar exists, then the Court will not consider the merits of the postconviction claim.[65] Under Delaware Superior Court Rules of Criminal Procedure, a motion for postconviction relief can be barred for time limitations, repetitive motions, procedural defaults, and former adjudications. A motion exceeds time limitations if it is filed more than one year after the conviction becomes final or if it asserts a newly recognized, retroactively applied right more than one year after it was first recognized.[66] A second or subsequent motion is repetitive and therefore barred.[67] Rule 61(i)(3) bars consideration of any claim not asserted in the proceedings leading up to the judgment of conviction unless the movant can show "cause for relief from the procedural default" and "prejudice from violation of

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[62] D.I. 88.
[63] *Id.*
[64] *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).
[65] *Id.*
[66] Super. Ct. Crim. R. 61(i)(1).
[67] Super. Ct. Crim. R. 61(i)(2).

movant's rights."[68] Rule 61(i)(4) provides that "any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred.[69] Here, the MPCR and AMPCR jointly constitute a timely first motion for postconviction relief that is not repetitive. However, many of Benson's MPCR and AMPCR alleging ineffective assistance of counsel are barred either by Super. Ct. R. 61(i)(3) or Super. Ct. R. 61(i)(4) as discussed below.

14. When alleging ineffective assistance of counsel, a claimant must demonstrate: (1) that counsel's performance was deficient; and (2) that the deficiency prejudiced the claimant by depriving him or her of a fair trial with reliable results.[70] In order to prove deficiency, the burden is on the defendant to show counsel's representation fell below an objective standard of reasonableness.[71] Furthermore, a defendant must present concrete allegations of actual prejudice and *substantiate* them.[72] "[A] court must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."[73]

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[68] Super. Ct. Crim. R. 61(i)(3).
[69] Super. Ct. Crim. R. 61(i)(4).
[70] *Strickland v. Washington*, 466 U.S. 668, 688 (1984).
[71] *Id.* at 667-68.
[72] *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996) (emphasis added).
[73] *Strickland*, 446 U.S. at 689.

Moreover, defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[74] Next, to meet the prejudice prong in the context of a challenged guilty plea, a defendant must show "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."[75] Failure to prove either prong will make the claim be unsuccessful and the Court need not address the other.[76] Benson cannot demonstrate that counsel's performance was deficient or that he would have insisted on going to trial. In fact, during the period from September 10, 2019 to March 3, 2020 Benson represented himself. In was during that period of time that most if not all of the suppression issues were litigated.

15. Benson claims in the MPCR that his guilty plea was coerced, and that counsel colluded with the State to use his son as leverage to induce him to plead guilty. Counsel denies this allegation in her affidavit and represents that it was Benson's desire to protect his family by pleading guilty.[77] The Court takes up this

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[74] *Id.* at 694.
[75] *Albury v. State,* 551 A.2d 53, 59 (Del. 1988) (citing *Hill v. Lockhart,* 474 U.S. 52, 58 (1985)); *Sartin v. State,* 2014 WL 5392047, at *2 (Del.); *State v. Hackett,* 2005 WL 30609076, at *3 (Del. Super. Ct.).
[76] *Strickland,* 466 U.S. at 697; *Ploof v. State,* 75 A.3d 811, 825 (Del. 2013) ("*Strickland* is a two-pronged test, and there is no need to examine whether an attorney performed deficiently if the deficiency did not prejudice the defendant.").
[77] D.I. 86, at 3-4.

claim first because the resolution of it has implications for many of his other claims. Benson entered a guilty plea on July 26, 2021.[78] The Court's colloquy with Benson conclusively establishes that he knowingly, intelligently, and voluntarily entered his plea and admitted his guilt.[79] Additionally, Benson stated that he understood that this guilty plea would result in forgoing certain rights and making it extremely difficult to withdraw.[80] After reciting the terms of the plea agreement, the Court conducted the following colloquy with him:

> THE COURT: Is that your understanding of the plea agreement?
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> THE DEFENDANT: Yes, Your Honor.
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> THE COURT: Have you freely and voluntarily decided to plead guilty to the charges of the written plea agreement?
>
> THE DEFENDANT: Yes, I have, Your Honor.
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> THE COURT: Have you been promised anything that is not stated in the written plea agreement?
>
> THE DEFENDANT: No, I haven't, Your Honor.
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> THE COURT: Ms. Wolpert, the state or anybody threatened you or forced you to enter into this plea?

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[78] D.I. 64.
[79] Tr. Plea Colloquy, at 9 (July 26, 2021), D.I. 71.
[80] *Id.* at 5, 10-11.

> THE DEFENDANT: No, they haven’t.

The Court then discussed with Benson the various trial rights he was waiving and continued the colloquy by asking:

> THE COURT:…Do you understand today if you plead guilty, you give up all of those trial rights?
>
> THE DEFENDANT: Yes, I do, Your Honor.
>
> THE COURT: There is also another right that I want to tell you about. It’s not listed here. And that is if I should go ahead and accept this guilty plea and then sentence you today, it’s going to be very difficult, if not impossible, for you to try to withdraw that guilty plea. Do you understand that?
>
> THE DEFENDANT: Yes, I do, Your Honor.

Next, the Court discussed the possible punishments Benson faced by entering his guilty plea:

> THE COURT: And the maximum would be for both charges together 23 years at level five and there is also the possibility of a fine.
>
> Do you understand that?
>
> THE DEFENDANT: Yes.
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> * * *
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> THE COURT: I already told you that on the firearm charges the minimum of ten years which the Court will have to impose…
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> * * *

> THE COURT: Are you satisfied with Ms. Wolpert's representation of you and that She's fully advised you of your rights?
>
> THE DEFENDANT: Yes, Your Honor.
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> THE COURT:…Mr. Benson, we have been going over something called a truth in sentencing guilty plea form, and you went over that with Ms. Wolpert a little while ago before you came in here. When you went over it with her and when you went over it with me, did you understand everything on the form?
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> THE DEFENDANT: Yes, I do, Your Honor.
>
> THE COURT: When you answered her questions and when you answered my questions, were you being truthful?
>
> THE DEFENDANT: Yes, Your Honor.

Finally, the Court read Benson the charges to which he was pleading guilty, asked him if he understood the charge, if he committed that offense, and what his plea was to each charge. As to each charge, Benson told the Court that he understood the charge, committed the offense, and plead guilty.[81]

16. "A plea is knowing and voluntary when it is 'voluntarily offered by the defendant, himself, with a complete understanding by him of the nature of the charge and the consequences of his plea, and the trial judge has so determined.'"[82] "A

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[81] *Id.*, at 8-17

[82] *Shorts v. State,* 2018 WL 2437229, at *4 (Del. May 30, 2018) (quoting *Brown v. State,* 250 A.2d 503, 504 (Del. 1969).

defendant 'is bound by the answers he provide[s] on his [truth-in-sentencing] guilty plea form."'[83] His '"statements to the Superior Court during the guilty plea colloquy are presumed to be truthful."'[84] The Court finds that there is no reason to believe that Benson was coerced into pleading guilty. The Court's colloquy with him conclusively refutes that contention.

17. Benson presents multiple IAC claims in his MPCR and his AMPCR. In his MPCR he claims that counsel: (1) failed to move to suppress evidence due to a warrantless police search; (2) failed to move to suppress an allegedly coerced confession; (3) failed to raise a "confrontation clause/hearsay" issue; (4) had a conflict of interest according to counsel; (5) apparently failed to raise a *Franks* issue;[85] (6) colluded with the State to coerce him into pleading guilty by leveraging his son; and (7) withheld the fact that officers wore body cameras and withheld transcripts from those body cameras.[86] The AMPCR adds that counsel was ineffective in: (1) failing to obtain transcripts of a home security video where a police detective allegedly is heard admitting to finding evidence; (2) failing to attempt to interview/question Kathleen Gott, a purported witness; and (3) failing to move to

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[83] *Id.,* (quoting *Dickson v. State,* 2010 WL 537731, at *2 (Del. Feb. 16, 2010).
[84] *Id.,* (quoting *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

[85] The Court uses the term "apparently" because the MPCR simply reads "Frank's [sic] issue." D.I. 78.
[86] D.I. 78.

suppress evidence based on a "Randolph" issue, an issue which Benson himself raised.[87]

18. A review of the timeline is helpful here since many of Benson's allegations of IAC relate to suppression issues. Benson represented himself from September 10, 2019 until March 3, 2020. That was the period when suppression issues were litigated. After he was allowed to represent himself, Benson was instructed by the Court to submit any motions he wished the Court to consider by September 30, 2019.[88] He filed motions to suppress the evidence seized pursuant to the administrative search,[89] to compel,[90] and to dismiss[91] on September 25th. On October 29th, he filed a request for a "Brady Report."[92] He filed a supplemental suppression motion on November 8, 2019.[93] He filed an addendum to his suppression motion on December 4th,[94] a second addendum on December 27th,[95] and a motion requesting a *Franks* hearing on January 22, 2020.[96] The Court held hearings on his motions on November 15, 2019 and January 24, 2020, the latter

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[87] D.I. 83.
[88] D.I. 20.
[89] D.I. 21.
[90] D.I. 22.
[91] D.I. 23.
[92] D.I. 28
[93] D.I. 29.
[94] D.I 35.
[95] D.I. 40.
[96] D.I. 43.

being a suppression hearing at which both the State and Benson presented evidence.[97] After the hearing on January 24th, Benson filed another suppression motion on February 7th.[98]

19. Benson's self-representation precludes any allegations that counsel was ineffective during the time she did not represent him. The IAC claims during the time Benson represented himself require the Court to take a different analytical approach. For those claims, the Court must assess whether the procedural bars of Rule 61(i) apply. Further, Benson's knowing, voluntary, and intelligent guilty plea "constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea."[99] With these considerations in mind, the Court now turns to the specific claims in the MPCR and the AMPCR.

20. Benson's first IAC claim in the MPCR is that counsel failed to move to suppress evidence due to a warrantless police search. On its face, this claim is false. Counsel filed a Motion to Suppress Evidence Seized Pursuant to Administrative Search on August 16, 2019.[100] Benson himself filed a suppression motion bearing the same caption as counsel's motion and, it his motion, adopted the factual

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[97] *See,* Tr. Supp. Hrg. (Jan. 24, 2020), D.I. 69.
[98] D.I. 47.
[99] *Johnson v. State,* 2008 WL 4830853 Del. Nov. 7, 2008), citing *Miller v. State,* 840 A.2d 1229 (Del. 2003).
[100] D.I. 17.

background set out in counsel's motion.[101] That motion, as supplemented by Benson, was resolved at the suppression hearing held on January 24, 2020. Thus, any suppression claims that were not asserted by Benson are subject to the bar of Rule 61(i)(3) unless he can show "cause for relief from the procedural default" and "prejudice from violation of [his] rights."[102] Issues that were previously adjudicated are barred as well.[103] That bar can be overcome if it can be shown that the Court lacked jurisdiction,[104] or that new evidence exists that creates a strong inference of actual innocence or a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or Delaware Supreme Court, applies to Benson's case and makes his conviction invalid.[105] The Court finds that the claim that counsel did not move to suppress evidence seized pursuant to the administrative search is factually untrue. Further, the propriety of the administrative search was fully litigated by Benson representing himself. The Court denied his motion. Thus, claims challenging that search are barred either by Rule 61(i)(3) because Benson did not raise them and failed to show "cause and prejudice," or by Rule 61(i)(4) because they were previously adjudicated. Benson has made no effort

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[101] D.I. 21.
[102] Super. Ct. Crim. R. 61(i)(3).
[103] Super. Ct. Crim. R. 61(i)(4).
[104] Super. Ct. Crim. R. 61(i)(5).
[105] *Id.;* Super. Ct. Crim. R. 61(d)(2)(i) and (ii).

establish that the bars to relief are inapplicable. Also, when he pled guilty Benson waived this claim.

21. Benson's second IAC claim in the MPCR alleges that counsel failed to move to suppress an allegedly coerced confession. This claim is barred by Rule 61(i)(3) because Benson failed to raise it and has failed to show cause for that failure and prejudice from a violation of his rights. Even if the claim were not barred, it would fail because the Court accepts counsel's representations in her affidavit that there was no good faith basis to move to suppress Benson's post-Miranda statement and that she made a strategic decision not to attempt to suppress Benson's on-scene statement.[106] Benson has not established either that counsel's performance was deficient or that he was prejudiced by her decision not to move to suppress his statements. Also, when he pled guilty, Benson waived this claim.

22. Benson's third IAC claim in the MPCR is that counsel failed to raise a confrontation clause/hearsay issue. Benson has failed to substantiate this claim. He did not explain this claim until his reply to the state's response. There, he explained that this claim relates to the failure of the State to produce a witness at the suppression hearing. To the extent the defendant did not raise the issue at the

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[106] D.I. 86.

suppression hearing, when he was representing himself, it is barred by Rule 61(i)(3). Also, when he pled guilty, Benson waived this claim.

23. Benson's fourth IAC claim in the MPCR is that counsel had a conflict of interest. Benson has failed to substantiate this claim. Apparently Benson is referring to a comment trial counsel made in their second request to withdraw from representing him.[107] That motion was generated by Benson's attempt to hire Eugene J. Maurer, Esquire to represent him after expressing dissatisfaction with Ms. Wolpert. The motion explained that Mr. Maurer and Ms. Wolpert are in the same firm and that an allegation that Ms. Wolpert was ineffective would create a conflict for Mr. Maurer, precluding him from representing Benson.[108] At a hearing on June 14, 2012, the issue was resolved when Benson agreed to cooperate and work with Ms. Wolpert.[109] Accordingly, Benson's agreement waived this claim. In any event, the claim is unsubstantiated because Ms. Wolpert had no conflict of interest.

24. Benson's fifth IAC claim in the MPCR is simply labeled "Frank's issue." This claim relates to Benson's claim that a probation officer made certain false representations in order to obtain authorization to conduct the administrative search that was the subject of his suppression motion. The Court addressed this

[107] D.I. 88.
[108] D.I. 58.
[109] Tr. Hrg., at 13-16 (June, 14, 2021), D.I. 65.

argument at the suppression hearing in the context of the officer's credibility.[110] Because the issue was previously adjudicated, and the bar to relief has not been overcome, it is barred by Rule 61(i)(4). Also, when he pled guilty, Benson waived this claim.

25. Benson's last claim in the MPCR alleges an IAC claim as well as a *Brady* violation. He claims that the State withheld the fact that officers wore body cameras during the administrative search of his residence and counsel withheld transcripts of body cameras and withheld her knowledge of such transcripts until after he pled guilty. This claim is not waived by his guilty plea because he contends that he was unaware of the issue until after he pled guilty. Nevertheless, Benson has failed to substantiate this claim as he presents no facts to support it. The Court credit's counsel's affidavit that she was not provided with any body-worn camera evidence, nor did she receive any transcripts from body-won cameras. Probation Officer Brian Vittori testified that the police wore no body cameras and did not video record the search.[111] That testimony is uncontradicted. Benson alludes to a home security video in his reply, but that was evidence he procured and not in the possession of the State.[112] Since *Brady* relates to exculpatory evidence improperly

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[110] Tr. Supp. Hrg., at 207-08, (Jan. 24, 2020), D.I. 69.
[111] *See,* Tr. Supp. Hrg., at 140 (Jan. 24, 2020), D.I. 69.
[112] D.I. 88.

withheld by the State, it has no application here where no body-worn camera evidence ever was in the hands of the State.

26. The Court next turns to the claims in the AMPCR. First, Benson amends his IAC claim in the MPCR to assert that counsel failed to obtain transcripts of the home security audio on which a detective is heard admitting to finding evidence and that she failed to interview witness Kathleen Gott. Both of these claims relate to Benson's *pro se* efforts to suppress evidence. Counsel bears no responsibility on this score. Further, at the hearing, Benson played the portion of the video he thought relevant to his argument.[113] Additionally Kathleen Gott, through counsel, asserted her Fifth Amendment privilege not to testify at the suppression hearing.[114] To the extent Benson seeks to litigate these claims outside of the IAC context, they as barred by Rule 61(i)(4) as previously adjudicated, and waived by his guilty plea.

27. Benson's final claim in the AMPCR is what he styles as a "Randolph" claim. In support of that claim he states, "For the Randolph issue, the non-probationer homeowner told probation officers that they could not search her house without a warrant."[115] This claim is unsubstantiated. Benson alleges a notarized

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[113] Tr. Supp. Hrg., at 153, (Jan. 24, 2020), D.I. 69.
[114] *Id.,* at 197-99.
[115] D.I. 83.

affidavit from Kathleen Gott should have been considered.[116] No affidavit was provided in the AMPCR, nor was one located in the record. Moreover, Benson failed to establish any facts to support this contention at the suppression hearing when he represented himself. Since this issue could have been raised before, it is procedurally barred under Rule 61(b)(i)(3). Also, when he pled guilty, Benson also waived this claim.

THEREFORE, for the reasons set forth above**,** Edward Benson's Motion for Postconviction Relief as amended by his Amended Motion for Postconviction Relief is **DENIED.**

IT IS SO ORDERED.

/s/ *Ferris W. Wharton*
Ferris W. Wharton, J.

[116] *Id.*.