

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
)	
v.)	Cr. ID. No. 1206022379
)	
)	
CHRISTOPHER E. CRAIG,)	
)	
Defendant.)	

Submitted: April 24, 2025

Decided: July 31, 2025

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

Barzilai K. Axelrod, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Christopher E. Craig, Howard R. Young Correctional Institute, Wilmington,
Delaware, *pro se*.

SALOMONE, Commissioner

This 31st day of July, 2025, upon consideration of the Second Motion for Postconviction Relief filed by Defendant Christopher E. Craig (“Craig” or “Defendant”),¹ the Memorandum of Law in support thereof² (together, the “Second Rule 61 Motion”), and the record in this matter, the following is my Report and Recommendation.

BACKGROUND AND PROCEDURAL HISTORY

In 1997, Craig was convicted of Murder in the Second Degree and Possession of a Deadly Weapon During the Commission of a Felony after a jury trial.³ He was sentenced to an aggregate of thirty-eight (38) years in prison followed by probation.⁴ Craig’s convictions and sentence were both affirmed on direct appeal.⁵

On July 30, 2012, while serving his sentence, Craig was indicted for Promoting Prison Contraband.⁶ On November 5, 2012, he pleaded guilty to the foregoing charge and was sentenced to three years of Level V incarceration, suspended after twelve months for twelve months of Level III probation, thereby adding another year to his total time of Level V incarceration.⁷ Craig did not appeal his conviction or sentence for Promoting Prison Contraband.

¹*State v. Christopher Craig*, Delaware Superior Court Criminal Docket, ID No. 1206022379 at 55 (hereinafter, “D.I. ___”).

² D.I. 56.

³ *See Craig v. State*, 2021 WL 5140997, at*1 (Del. Nov. 4, 2021).

⁴ *Id.*

⁵ *Craig v. State*, 1998 WL 664954 (Del. July 16, 1998).

⁶ D.I. 2.

⁷ D.I. 8-10.

In August 2018, the Department of Correction advised Craig that due to his conviction for Promoting Prison Contraband the good time credits he had acquired while serving his 1997 sentence were revoked by statute.⁸ On July 22, 2019, Craig filed a motion for postconviction relief asserting, among other things, that (i) his defense counsel was ineffective for failing to advise him that he would be forfeiting his accumulated good time credits by pleading guilty to Promoting Prison Contraband and (ii) forfeiture of his accumulated good time pursuant to 11 *Del. C.* §4382(a) without an order of the Court violated his due process rights (the “First Rule 61 Motion”).⁹ On August 29, 2019, this Court denied the First Rule 61 Motion on procedural grounds for being untimely filed.¹⁰ On July 29, 2020, the Delaware Supreme Court affirmed the decision of the Superior Court denying Craig’s postconviction motion and likewise finding that the motion was procedurally barred.¹¹

On October 1, 2020, Craig filed a Motion for Correction of an Illegal Sentence pursuant to Superior Court Criminal Rule 35(a) (“Rule 35(a)”), asserting that the

⁸ See *Craig v. State*, 2021 WL 5140997, at*1 (Del. Nov. 4, 2021)(citing 11 *Del. C.* §4382(a) which provides that “[a]ny person subject to the custody of the Department [of Correction] at Level IV or V shall, upon the conviction of any crime during the term of the sentence, forfeit all good time accumulated to the date of the criminal act; this forfeiture is not subject to suspension.”)

⁹ D.I. 12. Defendant’s Motion for Postconviction Relief was specially assigned to a different Superior Court judge due to a conflict of interest with the initially assigned judge. D.I. 15-16.

¹⁰ *State v. Craig*, 2019 WL 4131121 (Del. Super. Ct. Aug. 29, 2019).

¹¹ *Craig v. State*, 2020 WL 4360784 (Del. July 29, 2020).

automatic forfeiture of his good time credits rendered his sentence illegal.¹² On November 18, 2020, this Court denied the Rule 35(a) motion.¹³ On appeal, the Delaware Supreme Court determined that the judge who had denied Defendant's Rule 35(a) motion should have disqualified himself from the matter because he had served as Craig's defense counsel in connection with the case regarding Promoting Prison Contraband.¹⁴ The denial of Craig's Rule 35(a) motion was therefore vacated and remanded for reconsideration by another judge of the Superior Court.¹⁵

Upon remand, Craig was appointed an attorney by the Office of Conflict Counsel to represent him in connection with his Rule 35(a) motion.¹⁶ Despite this appointment, Defendant continued to advocate on his own behalf.¹⁷ On November 23, 2022, Craig filed an amended Rule 35(a) motion, arguing that the Department of Correction improperly applied 11 *Del. C.* §4382(a) to his sentence by revoking time that Defendant had not yet earned.¹⁸ According to Craig, because he was serving a minimum mandatory Level V sentence in 2012 during which he was not eligible to earn good time, the 894 total days of good time which were revoked could only be

¹² D.I. 24.

¹³ D.I. 24-25.

¹⁴ *Craig v. State*, 264 A.3d 1137 (Table), 2021 WL 5140997. The record reflects that while the judge did enter an appearance on behalf of Craig on September 7, 2012, he did not represent him when he entered his guilty plea and was sentenced according to the plea agreement and the truth-in-sentencing guilty plea form. *See* D.I. 8, 29.

¹⁵ *Id.*; D.I. 30-31.

¹⁶ D.I. 32.

¹⁷ D.I. 35, 37, 40, 42.

¹⁸ D.I. 40, 42.

earned after 2015 when he began serving the non-mandatory portion of his prison sentence.¹⁹ In terms of relief, Defendant sought an order restoring all the good time revoked (i.e. 894 days) or vacating his 2012 guilty plea and conviction.²⁰

In response, the State argued that Craig’s sentence was legal and that the relief sought was not available under Rule 35(a).²¹ Rather, the State argued, the proper procedure pursuant to which Craig could seek an order to restore his good time was through a writ of mandamus.²²

On March 30, 2023, this Court denied Craig’s amended Rule 35(a) motion, finding that Defendant’s three-year sentence fell within the three-year statutory limit for a Class F felony such as Promoting Prison Contraband, and was therefore a legal sentence.²³ Although not required, the Court also addressed the mandamus argument, explaining that “[t]he Superior Court may issue a writ of mandamus to the [Department of Correction] to compel the performance of a duty if the petitioner can show, among other things, ‘a clear right to the performance of a duty . . .’”²⁴ Citing *Twyman v. McBride*,²⁵ in which the Delaware Supreme Court addressed the issue of whether an inmate had a clear right to previously earned good time under

¹⁹ *Id.*

²⁰ *Id.*

²¹ D.I. 41.

²² *Id.*

²³ *State v. Craig*, 2023 WL 2726855 (Del. Super Ct. Mar. 30, 2023).

²⁴ *Id.* at *3 (citing *Smith v. McBride*, 2016 WL 4191928, at *1 (Del. Aug. 4, 2016)).

²⁵ 2020 WL 2989265 (Del. Jun. 4, 2020)

factual circumstances virtually identical to that of Defendant, the Superior Court found that by virtue of his 2012 guilty plea, which was dispositive of his guilt, Craig could not show a clear right to restoration of the good time that was revoked pursuant to 11 *Del. C.* §4382(a).²⁶ On May 11, 2023, Defendant appealed the denial of his Rule 35(a) motion to the Delaware Supreme Court.²⁷ On September 21, 2023, the Delaware Supreme Court affirmed the Superior Court’s order denying Craig’s motion for correction of an illegal sentence.²⁸

CRAIG’S SECOND RULE 61 MOTION

On April 11, 2025, Craig filed his Second Rule 61 Motion asserting several grounds for relief, which included claims related to (i) ineffective assistance of counsel, (ii) breach of the plea agreement, (iii) due process violations and (iv) improper application of procedural bar.²⁹ His specific claims can be fairly summarized as follows:

²⁶ *State v. Craig*, 2023 WL 2726855, at *3.

²⁷ D.I. 44.

²⁸ *Craig v. State*, 305 A.3d 352 (Table). On August 23, 2023, Defendant filed a *pro se* Petition for a Writ of Habeas Corpus, alleging that he was deprived of certain good time and monetary pay from June 2022 through September 2022 in connection with an incident that occurred on June 7, 2022. D.I. 50. Defendant states that he was fired from his prison job because of the incident and moved from the “merit” building immediately. *Id.* Defendant filed a grievance regarding the incident on June 9, 2023 and won his grievance on June 29, 2022, but was never returned to his prior status. *Id.* Through his petition, Defendant sought 40 days of good time and \$360.00 in lost wages. *Id.* On August 25, 2023, the Superior Court denied Defendant’s Petition for a Writ of Habeas Corpus, finding he was legally detained. D.I. 53.

²⁹ D.I. 55-56.

Ineffective Assistance of Counsel. Craig claims that his counsel was ineffective for failing to advise him of the consequences of his guilty plea, particularly the statutory revocation of good time credits under 11 *Del. C.* §4382(a).³⁰ Craig contends that his attorney assured him that he would only serve one year of Level V time and that no further penalties would arise from the plea.³¹ Craig states that had he been properly advised he would not have plead guilty to Promoting Prison Contraband.³²

Breach of Plea Agreement. Craig claims that the 2012 plea agreement expressly provides that no additional penalties would be imposed beyond the one-year sentence and the subsequent revocation of 894 days of good time credits violates the agreement.³³

Due Process Violations. Craig argues that due process requires that a defendant “be informed of the full scope of their sentencing consequences at the time of the plea” and that “the retroactive imposition of additional incarceration time violated [his] due process rights under the Fourteenth Amendment.”³⁴ Citing

³⁰ D.I. 56.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

Barkley v. State,³⁵ Craig claims that the revocation of his good time credits over five years after sentencing amounts to an *ex post facto* enhancement of his punishment.³⁶

Improper Application of Procedural Bar. Finally, Defendant asserts that the Superior Court erred in dismissing his First Rule 61 Motion on procedural grounds because the Department of Correction's delay in notifying him of the forfeiture of his good time credits pursuant to 11 *Del. C.* §4382(a) prevented him from filing a timely appeal because he was unaware of the revocation until receiving the August 15, 2018 letter.³⁷ Therefore, Craig contends, consideration of this prior ruling is necessary to prevent injustice and his First Rule 61 Motion must be considered timely under the doctrine of equitable tolling.³⁸

Prior to considering the substantive issues set forth in the Second Rule 61 Motion, the Court "must first consider the procedural requirements of Rule 61."³⁹

APPLICABLE LAW FOR POST CONVICTION RELIEF

Rule 61 and Procedural Bars to Relief

Superior Court Criminal Rule 61 ("Rule 61") governs the procedures by which an incarcerated individual may seek to have his conviction set aside on the

³⁵ 724 A.2d 558 (Del. 1999)(holding that immediate and automatic imposition of revocation of driving privileges at the time of sentencing was a direct penal consequence of a defendant's guilty plea of which he was required to be informed prior to entry of his plea).

³⁶ D.I. 56.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Bradley v. State*, 135 A.3d 748, 756-57 (Del. 2016) (citing *Younger v. State*, 580 A.2d 552,554 (Del. 1990)).

ground that the court lacked jurisdiction or any other ground that is a sufficient factual and legal basis for a collateral attack upon the conviction.⁴⁰ That is, it is a means by which the court may correct Constitutional infirmities in a conviction or sentence.⁴¹ “Rule 61 is intended to correct errors in the trial process, not allow defendants unlimited opportunities to relitigate their convictions.”⁴²

Given that intent, before considering the merits of any claims for postconviction relief, the Court must first determine whether there are any procedural bars to the postconviction motion.⁴³ Rule 61(i) establishes four procedural bars to postconviction relief.⁴⁴ Rule 61(i)(1) requires that a motion for postconviction relief be filed timely and prohibits such a motion from being filed “more than one year after the judgement of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.”⁴⁵

⁴⁰ Super. Ct. Crim. R. 61(a)(1).

⁴¹ *Harris v. State*, 410 A.2d 500 (Del. 1970).

⁴² *Ploof v. State*, 75 A.3d 811,820 (Del. 2013).

⁴³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁴⁴ Super. Ct. Crim. R. 61(i)(1)-(4).

⁴⁵ Super. Ct. Crim. R. 61(i)(1). *See e.g. Evick v. State*, 158 A.3d 878, 2017 WL 1020465, at *1 (Del. Mar. 15, 2017) (Table) (affirming denial of postconviction motion as untimely when filed more than two years after conviction became final).

Rule 61(i)(2) bars successive motions for postconviction relief unless certain conditions are met.⁴⁶ Pursuant to Rule 61(i)(3) and (4), any ground for relief that was not previously raised is deemed waived, and any claims that were 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, are thereafter barred.⁴⁷

The foregoing bars to relief do not apply to a claim that the court lacked jurisdiction or to a claim that satisfies the pleading requirements of Rule 61(d)(2).

Rule 61(d)(2) provides as follows:

A second or subsequent motion under this rule shall be summarily dismissed, unless the movant was *convicted after a trial* and the motion either:

(i) pleads 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) pleads with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant's case and renders the conviction or sentence invalid.⁴⁸

⁴⁶ Super. Ct. Crim. R. 61(i)(2). *See e.g. Walker v. State*, 154 A.3d 1167, 2017 WL 443724, at *1-2 (Del. Jan. 17, 2017) (Table) (denying defendant's third motion for postconviction relief as being repetitive).

⁴⁷ Super. Ct. Crim. R. 61(i)(3) and (4).

⁴⁸ Super. Ct. Crim. R. 61(d)(2) (emphasis added).

This is Craig’s Second Rule 61 Motion and, like his First Rule 61 Motion, it is procedurally barred for several reasons. First, the Second Rule 61 Motion was filed more than twelve years after the judgment of conviction became final and should be barred by Rule 61(i)(1) for being untimely. Craig’s argument regarding equitable tolling under Rule 61 has been squarely rejected by Delaware courts on numerous occasions.⁴⁹

The Second Rule 61 Motion is also barred by Rule 61(i)(2) for being repetitive as Craig made virtually identical arguments in his First Rule 61 Motion and Rule 35(a) motion, each of which were denied by this Court and affirmed by the Delaware Supreme Court. Rule 61(i)(2) prohibits Craig from relitigating them at this juncture.

Third, Craig fails to satisfy the pleading requirements of Rule 61(d)(2) because he did not have a jury trial but rather opted to plead guilty. Having failed to have been *convicted after a trial*, Rule 61(d)(2) does not provide an exception to his procedural bar against successive motions.⁵⁰

⁴⁹ See *State v. Ayers*, 2025 WL 1010968, *5 (Del. Super. Ct. Apr. 3, 2025) (noting “[e]xceptions, extensions and waivers of the time requirement appear to have universally failed when it comes to the timely filing of a Rule 61 motion”) (citations omitted); *Hassett v. State*, 147 A.3d 1133 (TABLE) (Del. 2016) (“[i]t is settled law that the equitable tolling doctrine does not apply to a motion for postconviction relief.”) (citing *Turnage v. State*, 2015 WL 6746644, *2 (Del. Nov. 4, 2015); see also *Chapman v. State*, 2007 WL 1933229, *2 (Del. July 3, 2007) (“The doctrine of equitable tolling is inapplicable to a motion for postconviction relief.”); *Carr v. State*, 554 A.2d 778 (Del. 1989).

⁵⁰ *Pickle v. State*, 2022 WL 499956 at *1, (Del. 17, 2022) (TABLE) (finding that the defendant could not invoke Rule 61(d)(2) because he opted to plead guilty instead of going to trial).

At core, the Second Rule 61 Motion simply recasts the same overarching issues raised by Craig in his prior motions for postconviction relief and correction of an illegal sentence. As such, the claims set forth in his Second Rule 61 Motion are also procedurally barred under Rule 61(i)(4) as they have been previously adjudicated. These claims cannot now be re-couched, refined, restated or re-raised in order to again seek judicial review.⁵¹

CONCLUSION

For the reasons discussed herein, Craig's Second rule 61 Motion is procedurally barred pursuant to Rule 61(i) and he has failed to meet the strict pleading requirements for proceeding with his successive motion under Rule 61(d)(2) because he was not convicted after trial but rather plead guilty to Promoting Prison Contraband. For the foregoing reasons, Craig's Second Motion for Postconviction Relief should be **SUMMARILY DISMISSED** and his request for an evidentiary hearing to examine his claims should be **DENIED**.

IT IS SO RECOMMENDED.

/s/ Janine M. Salomone

The Honorable Janine M. Salomone

⁵¹ See *State v. Clay*, 2022 WL 893744, at *2 (Del. Super. Mar. 25, 2022), *aff'd Clay v. State*, 2022 WL 4295417 (Del. Sept. 16, 2022) (finding that where an affidavit asserting the defendant's innocence was formerly adjudicated in a postconviction proceeding, it cannot constitute newly discovered evidence in a subsequent postconviction proceeding); see also *Johnson v. State*, 1992 WL 183069, *1 (Del.); *Duhadaway v. State*, 877 A.2d 52 (Del. 2005).

cc: The Honorable Sheldon K. Rennie
Prothonotary
Barzilai K. Axelrod, Esquire, Deputy Attorney General
Christopher E. Craig, *pro se*. (SBI #00334574)