

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
)	Cr. ID No. 1701005259
)	
DEVONTE DORSETT,)	
)	
Defendant.)	

Submitted: May 9, 2025
Decided: August 11, 2025

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE SUMMARILY DISMISSED
AND
DEFENDANT’S MOTION FOR THE APPOINTMENT OF COUNSEL
SHOULD BE DENIED**

Daniel B. McBride, Deputy Attorney General, Department of Justice, Wilmington,
Delaware, Attorneys for the State.

Devonte Dorsett, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se*.

PARKER, Commissioner

This 11th day of August 2025, upon consideration of Defendant's Rule 61 motion for postconviction relief, it appears to the Court as follows:

BACKGROUND AND PROCEDURAL HISTORY

On May 14, 2018, Defendant Devonte Dorsett pled guilty to Murder Second Degree, Robbery First Degree and two counts of Possession of a Firearm During the Commission of a Felony ("PFDCF").

These criminal charges stemmed from an incident on January 9, 2017, in which a victim was found lying face down on the floor of his store, Lancaster Market, bleeding from a gunshot wound to the back of his head. He was pronounced dead upon arrival at the hospital.¹

Evidence at the store indicted a robbery gone awry, with the cash drawer open and change scattered on the counter and floor. A spent .45 caliber shell casing and projectile were found at the scene. During the course of the resulting investigation, a witness was located and two suspects: Defendant Dorsett and a minor were identified.²

Dorsett was arrested the day after the robbery. As Dorsett was taken into custody, the police saw he had a loaded .45 caliber Glock 30 semi-automatic pistol, with 1 round in the chamber, and an extended magazine with 18 additional rounds.³

¹ See, *State v. Dorsett*, 2019 WL 2500944, *1 (Del.Super.).

² *Id.*

³ *Id.*

Dorsett, who was on probation for a conviction for Carrying a Concealed Deadly Weapon, was prohibited from possessing a firearm.⁴

The minor was also located and arrested. The minor agreed to speak to the police. The minor told the police officer that he and Dorsett had entered the store and demanded that the victim give them the money from the register. Dorsett and the victim struggled for control of Dorsett's gun. During the struggle, Dorsett shot the victim in the head.⁵

Dorsett waived his *Miranda* rights and thereafter made a statement to the police. In that statement, Dorsett admitted to shooting the victim, claiming it was an accident and happened during a struggle while the robbery was going bad. Dorsett also made incriminating statements regarding his possession of the firearm. Dorsett was intoxicated at the time of the incident.⁶

At the time of Dorsett's plea, he maintained that the facts of his case supported a finding that he was Guilty but Mentally Ill (GBMI) under 11 *Del. C. Sec.* 401(b), and he sought sentencing under 11 *Del. C. Sec.* 408(b).

Following a hearing and briefing on this issue, on June 17, 2019, the Superior Court concluded that the facts of the case did not support a GBMI finding and sentencing under 11 *Del. C. Sec.* 408(b). The Superior Court held that a finding of

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

GBMI is not available if the mental illness was proximately caused by voluntary intoxication, and that the term ‘mental illness’ does not include antisocial conduct. The Court found that it was intoxicating substance abuse and antisocial conduct that caused Dorsett to act the way he did at the time of incident on January 9, 2017.⁷

On November 8, 2019, Dorsett was sentenced to a total prison term of 78 years, suspended after 35 years, followed by probation.⁸

By Order dated December 17, 2020, the Delaware Supreme Court affirmed the decision of the Superior Court on direct appeal.⁹ On January 12, 2021, the Delaware Supreme Court issued its mandate affirming the Superior Court judgment.¹⁰ Dorsett’s conviction therefore became final on January 12, 2021.¹¹

On November 18, 2024, Dorsett filed a motion for correction of illegal sentence.¹² In that motion, Dorsett claimed that the sentences imposed on both PFDCF convictions violated the Double Jeopardy clauses of the federal and state constitutions. Dorsett further claimed that his counsel was ineffective for allowing him to accept his plea to two counts of PFDCF when doing so violated his double

⁷ *Id.* at 6-7.

⁸ See, D.I. 29- Sentencing Order.

⁹ *Dorsett v. State*, 2020 WL 7399017 (Del.).

¹⁰ D.I. 36- January 12, 2021 Supreme Court Mandate affirming Superior Court judgment.

¹¹ Super.Crim.R.61(m)(1)(ii).

¹² D.I. 37- Dorsett’s motion for correction of illegal sentence.

jeopardy rights. Dorsett reasoned that because the charges he pled guilty to involved only one victim and one crime, he should have only faced one count of PFDCF.¹³

The Superior Court denied Dorsett's motion for correction of illegal sentence for two reasons.¹⁴ The first reason for the denial of the motion was that Dorsett waived any claims regarding double jeopardy at the time he entered his plea. A voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea. This includes a waiver of a claim of a double jeopardy violation.¹⁵ At the time Dorsett entered into his guilty plea he waived any claims regarding double jeopardy.¹⁶

The second reason for the denial of the motion was that there was no merit to the claim. Dorsett misinterpreted the protections afforded by the Double Jeopardy Clause, which protects against multiple punishments for the same offense.¹⁷ The Court explained that Section 1447(a) of Title 11 provides that a person "who is in possession of a firearm during the commission of a felony is guilty of possession of a firearm during the commission of a felony."¹⁸ Each felony a defendant commits while in possession of a deadly weapon constitutes a separate PFDCF offense.¹⁹

¹³ D.I. 37- Dorsett's motion for correction of illegal sentence.

¹⁴ D.I. 38- Order Denying Motion for Correction of Illegal Sentence.

¹⁵ *Hall v. State*, 2007 WL 3170467, *1 (Del.).

¹⁶ D.I. 38- Order Denying Motion for Correction of Illegal Sentence.

¹⁷ See, *Nance v. State*, 903 A.2d 283, 286 (Del. 2006).

¹⁸ 11 Del. C. Sec.1447(a).

¹⁹ See, *Fletcher v. State*, 2015 WL 790206, *2 (Del.); *Nance v. State*, 903 A.2d 283, 288 (Del. 2006); *Pauls v. State*, 554 A.2d 1125 (Del. 1989).

Dorsett appealed the denial of his motion for correction of an illegal sentence to the Delaware Supreme Court. On appeal, the Delaware Supreme Court affirmed the Delaware Superior Court's denial of the motion.²⁰ The Supreme Court noted that ineffective assistance of counsel claims are not cognizable in correction-of-illegal sentence proceedings.²¹

DORSETT'S UNTIMELY RULE 61 MOTION

Dorsett filed the subject motion, a Rule 61 motion for postconviction relief, on April 29, 2025.²² In the motion, Dorsett reraises his claim of a double jeopardy violation. In the subject Rule 61 motion, Dorsett discusses his dissatisfaction with the Superior Court's and thereafter the Delaware Supreme Court's decision on this same issue when he raised it in his motion for correction of an illegal sentence. Dorsett believes there is plenty wrong with the Courts' respective prior decisions, and he wants to tee up the issue herein for another review. Along with the Rule 61 motion, Dorsett requested the appointment of counsel.²³

When it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief, the

²⁰ *Dorsett v. State*, 2025 WL 799487 (Del.).

²¹ *Id.*

²² D.I. 43.

²³ D.I. 44.

Court should enter an order for its summary dismissal.²⁴ Here, Dorsett's Rule 61 motion should be summarily dismissed.

First, despite Dorsett's dissatisfaction with the Superior Court's prior decision on this issue, like it or not, the fact remains that Dorsett waived his right to raise any alleged double jeopardy violation at the time he entered his plea.

Second, Dorsett's Rule 61 motion is time-barred, and as such, his Rule 61 motion should be summarily dismissed. To be timely, a motion for postconviction relief must be filed within one year after the judgment of conviction became final.²⁵ In this case, Dorsett was required to have filed his Rule 61 motion by January 2022 to be timely. Dorsett did not file the subject Rule 61 motion until April 2025, over three years later. His motion at this late date is now time-barred.

Third, despite Dorsett's discontent with the Courts' prior decisions on this issue, Dorsett's claim that his sentence was illegal because it violated the double jeopardy clauses of the federal and state constitutions is procedurally barred as previously adjudicated. Superior Court Criminal Rule 61(i)(4) precludes Dorsett from raising any claims in his Rule 61 motion that have already been previously adjudicated in a postconviction proceeding. The Delaware Superior Court has already held, and the Delaware Supreme Court has already affirmed, that Dorsett's

²⁴ Del.Super.Crim.R. 61(d)(5).

²⁵ Del.Super.Crim.R. 61(i)(1).

convictions do not violate the double jeopardy clauses of the federal and state constitutions. His claim is now procedurally barred as previously adjudicated.

Lastly, Dorsett's claims of double jeopardy violations are without merit. Because Dorsett's double jeopardy rights were not violated, there is no merit to his claim that his counsel was ineffective for not raising any such double jeopardy violation. An ineffective assistance of counsel claim based on counsel's failure to raise an objection is without merit if there is no legal or factual basis to do so.²⁶ Here, there was no legal or factual basis to raise a claim of a violation of Dorsett's double jeopardy rights.

Dorsett does not seem to understand that even though he was holding one gun, he committed multiple crimes. Each felony he committed while in possession of that same gun subjects him to a separate PFDCF charge. He was convicted of Robbery in the First Degree, a felony. He was also convicted of Murder in the Second Degree (a lesser included offense of Murder in the First Degree), also a felony. These two felonies, Robbery First Degree and Murder Second Degree, are separate and distinct from each other. Dorsett was properly charged with, and convicted of, PFDCF for each of these two felonies.

²⁶ *State v. Exum*, 2002 WL 100576, *2 (Del.Super.), *aff'd*, 2002 WL 2017230, *1 (Del.).

In *Fletcher v. State*, the defendant was convicted of three counts of PFDCF.²⁷ That defendant argued he should be only facing one count of PFDCF because he had only one weapon.²⁸ The Delaware Supreme Court held that each felony conviction can support a separate PFDCF conviction, even if there was only one weapon. In that case, the Defendant was convicted of three different drug felonies: (1) trafficking in cocaine, (2) possession of cocaine with the intent to deliver, and (3) maintaining a vehicle for keeping controlled substances. Since the Defendant committed three different felonies (even though the felonies all arose from the same incident on the same day), Defendant could be convicted of three counts of PFDCF, one for each of these separate felonies.²⁹ The PFDCF sentences were legal and did not violate the Double Jeopardy clauses of the federal or state constitutions.³⁰

Here, Dorsett was convicted of two underlying felonies: Robbery in the First Degree and Murder in the Second Degree. His two convictions for PFDCF, one for each of these two felonies was proper, legal, and did not violate the Double Jeopardy clauses of the federal or state constitutions.

²⁷ *Fletcher v. State*, 2015 WL 790206, *2 (Del).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*; See also, *Nance v. State*, 903 A.2d 283, 288 (Del. 2006)(Defendant properly sentenced to four counts of PFDCF when he had two firearms and was convicted of two underlying felonies) ; *Pauls v. State*, 554 A.2d 1125 (Del. 1989)(Defendant properly sentenced to six counts of possession of deadly weapon during commission of felony when he had two deadly weapons and was convicted of three underlying felonies: robbery, assault and burglary).

Dorsett's plea was valid and legal. His double jeopardy constitutional rights were not impacted in any way by his sentence. Likewise, Dorsett's claim of ineffective assistance of counsel for failing to raise his alleged double jeopardy violations is also without merit because there are no double jeopardy violations presented herein.

This motion should be summarily dismissed.

MOTION FOR APPOINTMENT OF COUNSEL

In accordance with the mandates of Rule 61, Dorsett's Rule 61 motion is summarily dismissed since the claims raised therein were waived at the time he entered into his plea, the motion is also time-barred, otherwise procedurally barred, and without merit.

In cases such as this, in which the conviction resulted from a guilty plea, counsel is appointed only in exceptional circumstances which are not presented in this time-barred and meritless motion.³¹ As such, Dorsett's request for the appointment of counsel, is likewise denied.

³¹ Super.Ct.Crim.R. 61(e)(3).

For the foregoing reasons, Dorsett's Motion for Postconviction Relief should be SUMMARILY DISMISSED and his request for the appointment of counsel should be DENIED.

IT IS SO RECOMMENDED.

/s/ Lynne M. Parker
Commissioner Lynne M. Parker

cc: Prothonotary
Kevin J. O'Connell, Esquire