

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE)
) RK06-04-0897-01
v. _____) RK06-04-0899-01
) Rape 3rd (F)
LLOYD K. DUKES,)
(ID. No. 0604005034))
)
Defendant.)

Submitted: October 1, 2013
Decided: October 2, 2013

R. David Favata, Esq., Deputy Attorney General, Department of Justice, for the State of Delaware.

Lloyd K. Dukes, *Pro se.*

Upon Consideration of Defendant's
Motion For Postconviction Relief
Pursuant to Superior Court Criminal Rule 61
DENIED

YOUNG, Judge

ORDER

Upon consideration of the Defendant's Motion For Postconviction Relief, the Commissioner's Report and Recommendation and the record in this case, it appears that:

1. The Defendant, Lloyd K. Dukes ("Dukes"), pled guilty on June 18, 2007, to two counts of Rape in the Third Degree, 11 *Del. C.* § 771. In exchange for Dukes' plea, the State entered a *nolle prosequis* on the remaining charges of an additional eighteen counts of Rape in the Third Degree, and twenty counts of Unlawful Sexual Contact in the Second Degree and agreed to request a presentence investigation. On August 16, 2007, Dukes was sentenced to thirty years at Level V, suspended after ten years and eight months, followed by probation. Four years were a minimum mandatory term.

2. The Defendant did not appeal his conviction or sentence to the Delaware Supreme Court; instead, over five years after Dukes' sentencing, he filed, *pro se*, the pending Motion For Postconviction Relief pursuant to Superior Court Criminal Rule 61. In his motion the defendant raises the following grounds for relief:

1) Ineffective assistance of Counsel.

3. The Court referred this motion to Superior Court Commissioner Andrea M. Freud pursuant to 10 *Del. C.* § 512(b) and Superior Court Criminal Rule 62 for proposed findings of facts and conclusions of law.

4. The Commissioner has filed a Report and Recommendation concluding that the Motion For Postconviction Relief should be denied, because it is procedurally

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time barred and meritless.

5. No objections to the Report have been filed.

NOW, THEREFORE, after *de novo* review of the record in this action, and for reasons stated in the Commissioner's Report and Recommendation dated August 8, 2013,

IT IS ORDERED that the Commissioner's Report and Recommendation is adopted by the Court, and the Defendant's Motion For Postconviction Relief is **DENIED**.

/s/ Robert B. Young

J.

RBV/lmc

oc: Prothonotary

cc: The Honorable Andrea M. Freud

R. David Favata, Esq.

Charles E. Whitehurst, Esq.

Lloyd K. Dukes, JTVCC

File

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE)	
)	
v.)	RK06-04-0898-01
)	RK06-04-0899-01
LLOYD K. DUKES)	Rape 3d Age Df (F)
)	
Defendant.)	
ID. No. 0604005034)	

COMMISSIONER'S REPORT AND RECOMMENDATION

**Upon Defendant's Motion for Postconviction Relief
Pursuant to Superior Court Criminal Rule 61**

R. David Favata, Esq., Esq., Deputy Attorney General, Department of Justice, for the State of Delaware.

Lloyd K. Dukes, *Pro se*.

FREUD, Commissioner
August 8, 2013

The defendant, Lloyd K. Dukes (“Dukes”), pled guilty on June 18, 2007 to two counts of Rape in the Third Degree, 11 *Del. C.* § 771. He was also charged with an additional eighteen counts of Third Degree rape and twenty counts of Unlawful Sexual Contact in the Second Degree. The charges stemmed from Dukes repeated

rape of his underage cousin over a three year period. Eventually the victim became pregnant and gave birth to a child whose DNA matched Dukes as the father. In exchange for Dukes plea, the State entered *nolle prosequis* on the remaining charges and agreed to request a presentence investigation. On August 16, 2007 Dukes was sentenced to a total of thirty years at Level V, suspended after serving ten years and eight months, followed by probation. Four years were a minimum mandatory term. Dukes did not file an appeal to the Delaware Supreme Court.

Next, on August 30, 2012, over five years after his sentencing, Dukes filed the pending motion for postconviction relief pursuant to Superior Court Criminal Rule 61. In his motion he raises the following grounds for relief:

- Ground One: Ineffective assistance of counsel.
Counsel failure to suppress all pre-trial statements made during police interrogation.
- Ground Two: Ineffective assistance of counsel
Movant was denied effective assistance at every stage of criminal proceeding which violates his 6th and 14th Amendment rights and also denied him a fair pre-trial investigation in al etc.
- Ground three: Ineffective assistance of counsel.
Kevin M. Howard ESQ. Forced the defendant Lloyd K. Dukes into taken a plea offer.

DISCUSSION

Under Delaware law, the Court must first determine whether Dukes has met the procedural requirements of Superior Court Criminal Rule 61, before it may consider the merits of the postconviction relief claims.¹ The pending motion was filed more than five years after his conviction became final. Dukes was sentenced on August 16, 2007 therefore, any motion under Rule 61 must have been filed by September 16, 2008 at the very latest. Thus, pursuant to Rule 61(i)(1), Dukes' motion is time barred unless he successfully "asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final."² Dukes makes no attempt to allege such a right, therefore his motion is clearly procedurally barred by Rule 61(i)(1). Nor has he alleged a constitutional violation under Rule 61(i)(5). This is not sufficient to overcome the procedural bar.

CONCLUSION

I find Dukes' motion is time barred by Rule 61(i). Consequently, I recommend that the Court *deny* Dukes' motion for postconviction relief as procedurally time barred. I have also reviewed the substance of Dukes' motion, his prior counsel's affidavit and the State's submission and it is equally clear that Dukes' vague and unsubstantiated motion is equally barred by Rule 61(i)(3) for failure to demonstrate

¹ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

² Super. Ct. Crim. R. 61(i)(1); *Cobb v. State*, 1996 WL 21057 at *2 (Del. Supr.); *State v. Mills*, 1996 WL 280893 at *2 (Del. Super.).

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cause and prejudice and is totally meritless.

/s/ Andrea Maybee Freud

Commissioner

AMF/dsc

oc: Prothonotary

cc: Hon. Robert B. Young

R. David Favata, Esq., Esq.

Charles E. Whitehurst, Jr., Esq.

Lloyd K. Dukes, VCC

File