

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE	)	
	)	
	)	I.D. No. 0607002649
v.	)	
	)	
TRACY D. CRISCO	)	
	)	
Defendant	)	

Submitted: March 25, 2014

Decided: June 3, 2014

On Defendant's Motion for Postconviction Relief.

SUMMARILY DISMISSED.

ORDER

Kathleen Dickerson, Esquire, Deputy Attorney General, Department of Justice, Dover, Delaware, Attorney for the State.

Tracy D. Crisco, Viola, Delaware, *pro se*.

COOCH, R.J.

This 3rd day of June 2014, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. Defendant Tracy D. Crisco ("Defendant") was convicted of Theft by False Pretense and Receiving Stolen Property. His conviction was affirmed by the Supreme Court of Delaware on March 24, 2008.¹ Defendant was discharged from probation in May of 2014 and a civil judgment was entered in the amount of

¹ *Crisco v. State*, 945 A.2d 1167, 2008 WL 763286 (Del. Mar. 24, 2008) (ORDER).

\$3,887.00.²

2. Defendant filed a “Motion to Dismiss for Loss or Destruction of and Failure to Produce Exculpatory Evidence and the Commission of Perjury by the States Representatives or Witnesses” on November 8, 2010.³ Defendant’s motion relies primarily on misconduct by the State and investigators he alleges occurred before and during his trial, including misstatements by witnesses and withholding of “exculpatory evidence.”⁴
3. Superior Court Criminal Procedure Rule 61 for Postconviction Remedy governs “the procedure on an application by a person in custody or subject to future custody under a sentence of this court seeking to set aside a judgment of conviction...”⁵ “All courts in Delaware that have considered whether postconviction relief under Rule 61 is potentially available to a person who is not ‘in custody or subject to future custody’ for the challenged sentence have agreed that such relief under Rule 61 is not available.”⁶ The Delaware Supreme Court has elaborated:

² Progress Rep. Disposition, Dept. of Correction Probation and Parole, Docket #71 (May 13, 2014).

³ Def.’s Mot. to Dismiss for Loss or Destruction of and Failure to Produce Exculpatory Evid. and the Commn. of Perjury by the Sts. Reps. or Witnesses. In his Reply, Defendant initially states that his filing is “[p]ursuant to Superior Court Rule of Criminal Procedure 47” governing *pro se* motions and requests the Court not apply “Rule 61 guidelines.” Def.’s Reply at 2. However, it appears to the State and this Court that Defendant seeks postconviction relief governed by Super. Ct. Crim. R. 61. St.’s Response at 1. Defendant concedes to that view, as evidenced by his subsequent filing of a Motion for Postconviction Relief form on March 25, 2014 and in the language of his Reply. Motion for Postconviction Relief, Docket #69, March 25, 2014; Def.’s Reply at 2 (“And be it known if the Court so wishes to have a Rule 61 filed then consider this my Rule 61.”).

⁴ Def.’s Mot. at 1-2.

⁵ Super. Ct. Crim. R. 61(a)(1).

⁶ *State v. Hinson*, 2006 WL 337031, *2 (Del. Super. Feb. 10, 2006). See also *Cammile v. State*, 984 A.2d 123, 2009 WL 3367065, at *1 (Del. Oct. 20, 2009) (ORDER) (“...Cammile is neither in custody nor subject to future custody on his 1996 conviction. As a result, Cammille lacks standing to seek relief under Rule 61, and the Superior Court was correct in concluding that his postconviction motion was moot.”); *Pumphrey v. State*, 937 A.2d 140, 2007 WL 3087405, at *1 (Del. Oct. 23, 2007) (ORDER) (“The Superior Court did not err in concluding that appellant lacked standing to pursue a motion for postconviction relief because appellant had completed his sentence and thus was no longer ‘in custody or subject to future custody’ under the sentence for which postconviction relief was sought.”); *Epperson v. State*, 829 A.2d 935, 2003 WL 21692751, at *1 (Del. July 18, 2003) (ORDER) (“The Superior Court did not err in concluding that Epperson’s latest postconviction petition should be denied because Epperson previously had been discharged as unimproved from the probationary sentence associated with the charges for which he sought postconviction relief. Thus, Epperson is no longer subject to custody as a result of those prior charges.”); *Summers v. State*, 818 A.2d 971, 2003 WL 1524104, at *1 (Del. March 20, 2003) (ORDER) (“Summers was discharged from his 1993 probation as unimproved. He is no longer in custody as a result of his 1993 conviction and thus is not entitled to seek postconviction relief. Accordingly, the Superior Court did not err in summarily dismissing his petition.”); *Guinn v. State*, 625 A.2d 279, 1993 WL 144874,

We have previously explained that a person loses standing to move for postconviction relief under Rule 61 where the defendant is not in custody or subject to future custody for the underlying offense or challenged sentence. The Superior Court has consistently applied the custody standard in summarily dismissing other postconviction motions. The Superior Court discharged Ruiz from probation on June 3, 1997, he is not subject to any future custody for these original charges, and thus lacks standing to seek Rule 61 relief. We affirm the denial of his motion for postconviction relief without reaching his substantive claims.⁷

4. Before addressing the merits of this Motion for Postconviction Relief, the Court must address any procedural requirements of Superior Court Criminal Rule 61(i).⁸ Here, Defendant has been discharged from probation and a civil judgment has been entered. He is therefore no longer “in custody or subject to future custody” in a manner contemplated by Rule 61. As such, Defendant lacks standing under Rule 61 and is not entitled to seek postconviction relief. The Court need not reach the merits of Defendant’s Motion.

Therefore, Defendant’s Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

oc: Prothonotary
cc: Investigative Services

at *1 (Del. Apr. 21, 1993) (ORDER) (“Guinn is no longer in custody for the assault in a detention facility offense. Guinn completed serving this sentence on January 27, 1988 and cannot seek postconviction relief from this sentence.”).

⁷ *Ruiz v. State*, 956 A.2d 643, 2008 WL 1961187, at *2 (Del. May 7, 2008) (ORDER).

⁸ *Guinn v. State*, 882 A.2d 178, 181 (Del. 2005) (citing *Younger v. State*, 580 A.2d 552, 554 (Del. 1990)).