

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	I.D. No. 0601021343A
v.)	
)	
JAMAIEN MONROE)	
)	
Defendant)	

Submitted: March 24, 2014
Decided: June 6, 2014

Upon Commissioner’s Report and Recommendation that Defendant’s Motion for
Postconviction Relief Be **DENIED**.
REPORT AND RECOMMENDATION ACCEPTED.

MEMORANDUM OPINION

Caterina Gatto, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Michael C. Heyden, Esquire, Wilmington, Delaware, Attorney for Defendant
Jamaien Monroe.

COOCH, R.J.

I. INTRODUCTION

Defendant Jamaien Monroe (“Defendant”) has filed a Motion for Postconviction Relief, stemming from his conviction of non-capital Murder First Degree and related charges in the shooting death of Andre “Gus” Ferrell (“Ferrell”).¹ His motion follows the affirmance of his conviction on direct appeal to the Supreme Court of Delaware.² The motion is based on three claims of ineffective assistance of counsel:

¹ *State v. Monroe*, 2010 WL 1960123, at *1 (Del. Super. May 14, 2010).

² *Monroe v. State*, 28 A.3d 418 (Del. 2011).

1. “Counsel was ineffective by failing to renew the motion to exclude the testimony of Jonathan Wisher and Ronald Wright, sever the charges or exclude evidence concerning an uncharged robbery.”³
2. “Trial counsel was ineffective by failing to request a mistrial after the State’s witness [Kason Wright] invoked his Fifth Amendment rights and refused to testify.”⁴
3. Trial counsel was ineffective by failing to request a mistrial after a previously undiscovered store receipt was found in the pockets of a jacket being examined by the jury as evidence during deliberations.⁵

Pursuant to Superior Court Criminal Rule 62, after careful and *de novo* review of the record in this action, and for the reasons stated below, the Commissioner’s Report, including its Recommendation, is **ACCEPTED** by the Court. Defendant’s Motion for Postconviction Relief is hereby **DENIED**.

As was done in this Court’s May 14, 2010 opinion denying Defendant’s Motion for a New Trial in this case, Defendant’s first claim will again be analyzed both pursuant to 1) the “sufficient evidence” standard utilized in the federal courts and regularly in numerous other jurisdictions (an issue of apparent first impression in this state) and 2) the “plain, clear and conclusive” standard utilized in Delaware courts.⁶

II. PROCEDURAL HISTORY AND RELATED FACTS

The Commissioner’s Report and Recommendation set forth the procedural history of this case:⁷

On November 14, 2007, Defendant Jamaien Monroe was indicted on charges stemming from two separate shootings involving the same victim, [Ferrell]. Defendant Monroe was charged with attempted murder first degree and firearms offenses related to the first shooting of Ferrell on January 26, 2006. Defendant Monroe was also indicted on murder first degree, firearms offenses, and multiple counts of reckless endangering first degree and endangering the welfare of a child arising from the April 2, 2007 shooting that killed Ferrell. [...]

³ Def.’s Memo. Rep. in Support of his Mot. for Post Conviction Relief at 3.

⁴ *Id.* at 4.

⁵ *Id.* at 5-6.

⁶ *See Monroe*, 2010 WL 1960123 at *17-24 (finding evidence admissible both under Delaware’s “plain, clear and conclusive” standard and, alternatively, under a “sufficient evidence” standard were Delaware to follow the majority of states and the federal courts).

⁷ *State v. Monroe*, 2014 WL 934446, at *1 (Del. Super. Mar. 6, 2014). For a complete narrative of the factual circumstances of this case unrelated to this appeal *see Monroe*, 28 A.3d at 423-25.

In the subject action, [...]the conflict between the victim Ferrell and Defendant Monroe began with an uncharged attempted robbery of Ferrell by Defendant Monroe on January 25, 2006. It then continued with the attempted murder of Ferrell by Defendant Monroe the next day, January 26, 2006. It then ended fifteen months later, on April 2, 2007, with the murder of Ferrell by Defendant Monroe.

Prior to trial, Defendant Monroe filed a Motion *in Limine* to exclude evidence⁸ of the uncharged attempted robbery of Ferrell by Monroe on January 25, 2006. The court held a pretrial hearing on Defendant's motion. The Superior Court denied the motion. The Superior Court held that the evidence of Defendant Monroe's involvement in the necklace robbery was "plain, clear and conclusive" and could tend to show that Defendant was involved in the necklace robbery the day before the alleged attempted murder, and therefore, had a motive to murder, or to attempt to murder, Ferrell.⁹

Ronald Wright and Jonathan Wisher testified at trial in a manner consistent with their testimony at the pretrial hearing. However, Kason, upon taking the stand in front of the jury, unexpectedly refused to testify and invoked his Fifth Amendment rights. "[T]he [Kason] 'drama' played out largely in front of the jury. [Kason] first 'pled the Fifth'. Then he was brought out again and requested counsel. Finally, he requested a conference with his mother. Then he never appeared again."¹⁰ As a result of Kason failing to "testify to anything substantive, his videotaped statement to the police was inadmissible at trial."¹¹

After the trial concluded and during deliberations, jurors were examining a black jacket entered into evidence when they discovered a receipt for automobile repairs with the name "Jamar Dawson":

On April 2, 2007, the evening of the murder of Ferrell, videotape from the Derrs store depicted a man who looked like Defendant Monroe, wearing a black and red jacket in the market, in the immediate area prior to Ferrell's arrival. During a search of Saunders' apartment (Defendant Monroe's girlfriend's apartment), located in the Lexington Green Apartments in the Edison Building, the police found a jacket fitting the description of the one seen in the videotape. The receipt at issue was found by the jury inside this jacket pocket. [...] [T]he receipt was not subject to cross examination and no foundation was laid for its admission.¹²

The receipt was made a court exhibit and jurors were instructed to disregard it.¹³

⁸ The evidence included the testimony of three witnesses: Ronald Wright, Jonathan Wisher, and Kason Wright ("Kason"). Also introduced was Kason's videotaped statement. "In that statement, [Kason] said that he was with Monroe when Monroe attempted to rob Ferrell on January 25, 2006." *Monroe*, 28 A.3d at 429.

⁹ "In making that ruling, the trial judge specifically noted the significance of [Kason's videotaped] statement." *Id.*

¹⁰ *Monroe*, 2014 WL 934446, at *8.

¹¹ *Id.* at *6.

¹² *Id.* at *9.

¹³ Def.'s Memo. at 7.

The jury returned a verdict of guilty for Murder in the First Degree and related charges for the death of Ferrell, but not guilty on the charges of Attempted Murder and Possession of a Firearm During the Commission of a Felony related to the previous attempt on Ferrell's life.¹⁴ Defendant was sentenced to life imprisonment plus twelve years.¹⁵

The Commissioner's report describes the subsequent appeals post-trial:¹⁶

On April 2, 2009, a Motion for a New Trial was filed by Defendant Monroe. The only issue raised by Defendant in his motion for a new trial was whether the jury appropriately heard "plain, clear and conclusive" evidence of the prior uncharged necklace robbery at trial. This motion was denied on May 14, 2010.

Defendant filed a direct appeal to the Delaware Supreme Court. On September 14, 2011, the Delaware Supreme Court affirmed the judgment of the Superior Court. On October 4, 2011, the Delaware Supreme Court issued its mandate to the Superior Court directing the affirmance of the judgment of the Superior Court. [...]

On September 25, 2012, Defendant filed a *pro se* motion for postconviction relief along with a supporting memorandum of law. Defendant then filed an amendment to his motion. Thereafter, Defendant Monroe filed a motion for the appointment of counsel which the court granted on December 28, 2012. On April 29, 2013, Defendant's appointed counsel filed an amended Rule 61 motion entitled "Memorandum Report in Support of Defendant's Motion for Postconviction Relief."

Before making a recommendation, the record was enlarged and Defendant's trial counsel was directed to submit an Affidavit responding to Defendant's ineffective assistance of counsel claims. In turn, the State was directed to, and did, file a response to the motion. On January 27, 2014, Defendant's Rule 61 counsel filed a reply thereto. In addition, after the briefing was completed, the Defendant, *pro se*, filed correspondence with the court seeking to highlight, emphasize and expand upon various points raised in his Rule 61 motion.¹⁷

¹⁴ St.'s Response to Def.'s Mot. for Postconviction Relief at 2.

¹⁵ *Monroe*, 2014 WL 934446, at *1.

¹⁶ *Id.* at *1, *4 (Del. Super. Mar. 6, 2014).

¹⁷ Defendant also subsequently filed a "Motion to Substitute Counsel" citing an alleged lack of contact with current defense counsel and a failure of defense counsel to correct alleged errors and argue all Defendant's claims in the manner he suggests in his correspondence. Defendant requests that he receive different representation in his Motion for Postconviction Relief due to his counsel's alleged "'abandonment' to his claims, amount[ing] to conduct that is tantamount to a total default in carrying out the obligations imposed upon him..." Def.'s Mot. to Substitute Counsel Pursuant to Super. Ct. Crim. R. 61(I)(E) [sic]. Defendant's Motion is **DENIED**, but the facts and arguments he alleges defense counsel omitted in his February 12, 2014 "Defendant's Letter to Defense Counsel and Reply to State's Answer" were considered in the writing of this opinion. Defendant argues that his current claim is not barred as previously adjudicated under Rule 61 because it is distinct from his direct appeal, a distinction Defendant asserts was not properly made by defense counsel. Def.'s Ltr. at 2. Alternatively, he argues his claims override the procedural bars of Rule 61 "in the interest of justice." *Id.* at 3. Defendant also disputes trial counsel's statements in

The Commissioner's Report and Recommendation concluded that Defendant's Motion for Postconviction Relief be denied.

III. CONTENTIONS OF THE PARTIES

a. Defendant's Contentions

Defendant first contends that his trial counsel was ineffective when they failed to renew their pretrial motion to exclude the testimony of Jonathan Wisher and Ronald Wright and evidence of the uncharged robbery, or, alternatively, failed to reassert their motion to sever the charges.¹⁸ Defendant argues that, after Kason declined to testify at trial, "the factual basis that supported the pretrial ruling [to allow the robbery testimony in] had greatly changed" and "only part of the evidence that formed the basis of the pretrial ruling was presented at trial."¹⁹ Secondly, Defendant argues that trial counsel was ineffective by failing to request a mistrial after Kason declined to testify.²⁰ Defendant contends that Kason's behavior in front of the jury "cast the defendant in a bad light as [...] dangerous and vengeful...[or] also guilty of a crime."²¹ As the "damage" had already been done in front of the jury, Defendant contends that a curative instruction was not sufficient and a mistrial should have been requested.²² Defendant contends trial counsel failed to take advantage of or mitigate Kason's refusal to testify to their client's detriment.

Finally, Defendant contends that trial counsel was ineffective when they failed to request a mistrial at the discovery of the receipt in the jacket pocket during jury deliberations.²³ Defendant contends this evidence could either be interpreted as use of an alias or as potential "explosive exculpatory evidence," indicating "Jamar Dawson" in the shooting.²⁴ As this evidence "could have been extremely harmful or extremely beneficial to [Defendant]," Defendant maintains a mistrial should have been granted instead of the curative instruction given.²⁵

their affidavit that their actions were based in sound trial strategy. *Id.* Lastly, Defendant is dissatisfied that defense counsel failed to attack the evidentiary seizure of the jacket in which the receipt was eventually found. *Id.* at 4.

¹⁸ Def.'s Memo. at 3.

¹⁹ *Id.* at 4.

²⁰ *Id.*

²¹ *Id.* at 4-5.

²² *Id.* at 5.

²³ *Id.* at 6.

²⁴ Def.'s Memo. at 6.

²⁵ *Id.* at 7.

b. The State's Contentions

The State contends that Defendant's first claim is procedurally barred as formerly adjudicated and reconsideration is not warranted in the interest of justice.²⁶ In the alternative, the State maintains that Defendant's first claim also fails to meet the *Strickland* test for ineffective assistance of counsel.²⁷

The State asserts Defendant's second claim has no merit.²⁸ Not only does the State contend that the Confrontation Clause is inapplicable here because the witness did not testify, but the State also claims that there was no actual prejudice. Among other arguments, the State points to the fact that the Defendant was found not guilty of the attempted murder charges to underscore the actual effectiveness of Defendant's trial counsel.²⁹

The State takes the position that Defendant's third ground for relief is also procedurally barred under Rule 61(i)(3) procedural default for a failure to assert actual prejudice.³⁰ Again, the State maintains that trial counsel's strategic decision does not meet the *Strickland* factors.³¹

IV. STANDARD OF REVIEW

Under the 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.³² A motion can exceed time limitations if it is filed more than one year after the conviction is finalized or it asserts a newly recognized, retroactively applied right more than one year after that right is first recognized.³³ A motion is considered repetitive and therefore barred if it asserts any ground for relief "not asserted in a prior postconviction proceeding."³⁴ Repetitive motions are only considered if it is "warranted in the interest of justice."³⁵ Grounds for relief "not asserted in the proceedings leading to the judgment of conviction" are barred as procedural default unless movant can show "cause for relief" and "prejudice from [the] violation."³⁶ Grounds for relief

²⁶ St.'s Response at 8.

²⁷ See *Strickland v. Washington*, 466 U.S. 668 (1984).

²⁸ St.'s Response. at 11.

²⁹ *Id.*

³⁰ *Id.* at 9.

³¹ *Id.* at 10.

³² Super. Ct. Crim. R. 61(i).

³³ Super. Ct. Crim. R. 61(i)(1).

³⁴ Super. Ct. Crim. R. 61(i)(2).

³⁵ *Id.*

³⁶ Super. Ct. Crim. R. 61(i)(3).

formerly adjudicated in the case, including “proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus hearing” are barred.³⁷ Former adjudications are only reconsidered if “warranted in the interest of justice.”³⁸

Before addressing the merits of this Motion for Postconviction Relief, the court must first apply the procedural bars of Superior Court Criminal Rule 61(i).³⁹ If a procedural bar exists, then the Court will not consider the merits of the postconviction claim.⁴⁰ However, Defendant can overcome a procedural bar if he asserts that he has “a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”⁴¹ “This exception to the procedural bars is very narrow and is only applicable in very limited circumstances. A claim of ineffective counsel in violation of the Sixth Amendment to the United States Constitution, by its very nature, qualifies as just such an exception.”⁴²

To successfully articulate an ineffective assistance of counsel claim, a claimant must demonstrate first that counsel’s performance was deficient. To prove counsel’s deficiency, a defendant must show that counsel’s representation fell below an objective standard of reasonableness.⁴³ “Mere allegations of ineffectiveness will not suffice. A defendant must make specific allegations of actual prejudice and substantiate them.”⁴⁴ “Judicial scrutiny of counsel’s performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel’s assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.”⁴⁵ “[A] court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance[.]”⁴⁶ Secondly, a Defendant must demonstrate that the deficiencies prejudiced the Defendant by depriving him or her of a fair trial with reliable results. A successful Sixth Amendment claim of ineffective assistance of counsel requires a showing “that there is a reasonable

³⁷ Super. Ct. Crim. R. 61(i)(4).

³⁸ *Id.*

³⁹ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁴⁰ *Id.*

⁴¹ Super. Ct. Crim. R. 61 (i)(5).

⁴² *State v. Wilmer*, 2003 WL 751181 (Del. Super. Feb. 28, 2003), *aff’d*, 827 A.2d 30 (Del. 2003).

⁴³ *Strickland*, 466 U.S. at 668.

⁴⁴ *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

⁴⁵ *Strickland*, 466 U.S. at 689.

⁴⁶ *Id.*

probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.”⁴⁷

V. DISCUSSION

a. First Claim: Counsel’s failure to seek to exclude the testimony of Jonathan Wisner and Ronald Wright, to sever the charges, or to exclude evidence of the necklace robbery.

Defendant’s first claim is procedurally barred as previously adjudicated. This Court previously concluded that “the testimony of Ronald Wright and Jonathan Wisner alone was sufficient to establish proof of the necklace robbery by ‘plain, clear and conclusive’ evidence.”⁴⁸ Despite the fact that neither witness was able to identify that they saw Defendant commit the robbery, they both gave compelling testimony placing him at the scene at the time the robbery occurred.⁴⁹ “[T]he jury was permitted to assess the credibility of that testimony, draw permissible inferences, including whether Defendant had a motive to attempt to murder, or to actually murder, consider other evidence in the trial, and consider whether Defendant was, indeed, involved in the necklace robbery.”⁵⁰ This Court concluded that “[e]ven without the testimony of [Kason], evidence of the prior uncharged necklace robbery was ‘plain, clear and conclusive.’”⁵¹ On direct appeal, the Delaware Supreme Court affirmed this finding.⁵²

This Court, in its decision of May 14, 2010 denying Defendant’s Motion for New Trial, analyzed the 404(b) issue pursuant to 1) Delaware’s traditional “plain, clear and conclusive”⁵³ standard as well as 2) the “sufficient evidence” standard employed by the federal courts and by many other jurisdictions.⁵⁴ As noted by this Court in that “sufficient evidence” analysis, the less restrictive “sufficient evidence” standard has become the clear majority position in other jurisdictions and in the

⁴⁷ *Id.* at 694.

⁴⁸ *Monroe*, 2010 WL 1960123 at *12.

⁴⁹ *Id.* at *13.

⁵⁰ *Id.* at *14.

⁵¹ *Id.*

⁵² *Monroe*, 28 A.3d at 431.

⁵³ This standard was apparently first announced forty years ago in *Renzi v. State*, 320 A.3d 711, 712 (Del. 1974).

⁵⁴ See 1 Edward Imwinkelried, *Uncharged Misconduct Evidence* § 2:9 (2009); see also Stephan A. Saltzburg, Michael Martin, and Daniel J. Capra, *Federal Rules of Evidence Manual* (9th Ed.2006) (stating that “[i]n the early years of the Federal Rules, many Courts required ‘clear and convincing evidence’ that a criminal defendant committed an uncharged act before proof of the act could be admitted. However, the Supreme Court rejected this standard as unduly stringent, and inconsistent with the language of 104(b) ...”). This Court notes that the phrase “substantial proof” and “sufficient evidence” appears to be used interchangeably by the authorities when discussing the modern standard.

This Court has employed the term “sufficient evidence” since that was the term used in *Huddleston v. United States*, 485 U.S. 681 (1988). For an in depth discussion by this Court of the development of the “sufficient evidence” standard and an analysis of its application to this case, see *Monroe*, 2010 WL 1960123 at *17- 24.

federal courts. As the evidence of the necklace robbery meets Delaware’s traditional “plain, clear and conclusive” standard, it easily meets the “sufficient evidence” standard as well.

In the direct appeal, neither party mentioned in its briefs filed in the Supreme Court nor at oral argument that Defendant’s Motion for New Trial had been alternatively denied by this Court pursuant to the “sufficient evidence” standard. The Supreme Court analyzed the issue based on the arguments before it and addressed only the application of Delaware’s traditional “plain, clear and conclusive” standard. The Supreme Court did not include a “sufficient evidence” analysis in its opinion. Any change to Delaware’s “plain, clear and conclusive” standard would need, of course, to come from the Delaware Supreme Court.

Thus, this Court accepts the well-reasoned analysis and conclusion of the Commissioner that Defendant’s first claim for postconviction relief be denied and, alternatively, again denies the claim under the majority view “sufficient evidence” standard.

b. Second Claim: Counsel’s failure to request a mistrial after Kason refused to testify.

Defendant’s second claim for relief is that “[t]rial counsel was ineffective by failing to request a mistrial after the State’s witness invoked his Fifth Amendment rights and refused to testify.”⁵⁵ Defendant’s trial counsel made the tactical decision not to request a mistrial after Kason refused to testify because they felt his refusal taken with the testimony of the other witnesses was helpful to Defendant.⁵⁶ They observed he “looked and acted like a person with something to hide -- namely, his guilt for the necklace robbery and possibly the attempted murder.”⁵⁷ Great weight is given to tactical decisions of trial counsel such as this and Defendant fails here to overcome the presumption that trial counsel’s conduct was sound trial strategy.

Defendant also fails under the second prong of *Strickland* by failing to show any actual prejudice. Defendant was found not guilty of the charges related to the attempted murder that the State theorized stemmed from the attempted robbery the day before. Commissioner’s recommendation that Defendant’s second claim be denied is hereby accepted.

⁵⁵ Def.’s Memo. at 4.

⁵⁶ Patrick J. Collins and Jennifer-Kate M. Aaronson Aff. at 2.

⁵⁷ *Id.* at 2.

c. Third Claim: Counsel’s failure to request a mistrial after the receipt discovery.

Defendant’s final claim for relief is that trial counsel was ineffective by failing to request a mistrial after a previously undiscovered store receipt was found in the pockets of a jacket being examined by the jury as evidence during deliberations.⁵⁸ Trial counsel acknowledged in their affidavit that the discovery of the receipt was “problematic” but opted to recommend to the Court that the jury continue with deliberations because “the jury had been deliberating for quite a while, and [they] thought from [their] observation that the jury was receptive to the defense case.”⁵⁹ Trial counsel was worried to risk a retrial, with a “shore[d] up” case from the State and the possibility of a less receptive jury.⁶⁰ Instead of requesting a mistrial, they requested a curative instruction as a strategic decision.⁶¹

At the time of the receipt’s discovery, the Court first held “the problem was caused by the State and, as a practical matter, the chief investigating officer, who has the responsibility to make sure there was nothing in the pockets that was not known.”⁶² The Court also agreed with trial counsel’s assertion “that there was no evidentiary foundation laid for those items, no opportunity for cross-examination about them, no opportunity for argument in closing argument by defense counsel as to the significance, if any, of those items. They shouldn’t have been before the jury.”⁶³ The Court also noted “[j]uries are, as [trial counsel] said, frequently instructed to disregard testimony, or items admitted into evidence sometimes or inadvertently shown to the jury before they were admitted, and they regularly are instructed to disregard certain testimony and sometimes exhibits that do come to their attention. Juries in Delaware are presumed to follow jury instructions.”⁶⁴ The Court also held that any probative value of the receipt was outweighed by the potential prejudice to the defendant, using by analogy Rule of Evidence 403.⁶⁵

Again, it is “all too tempting” here to “second-guess” the decisions of trial counsel.⁶⁶ This decision clearly falls within the “wide range” anticipated by

⁵⁸ Def.’s Memo. at 5-6.

⁵⁹ Patrick J. Collins and Jennifer-Kate M. Aaronson Aff. at 3.

⁶⁰ *Id.*

⁶¹ The instruction was given as follows:

The items found in the jacket, four receipts, two pennies, a cigarette lighter, and a blue cloth, are not part of the evidence in the trial. You must disregard these items entirely, and they must play no role whatsoever in your deliberations in this case. The Court will keep these items.

State v. Monroe, ID # 0601021343, at 12 (Del. Super. Mar. 16, 2009) (TRANSCRIPT).

⁶² *Id.* at 9-10.

⁶³ *Id.* at 10.

⁶⁴ *Id.* at 10-11.

⁶⁵ *Id.* at 11.

⁶⁶ *Strickland*, 466 U.S. at 669.

Strickland and is not enough to overcome Defendant's burden. The Commissioner accurately observed that "[t]hese seasoned, experienced attorneys were in the trenches, they saw the trial unfold, they watched the witnesses testify, they observed the demeanor of the witnesses and that of the jury, they had a feel for the proceeding that only those in the throes of the trial could have."⁶⁷ Given the variety of ways the receipt could have been interpreted, the trial attorneys made a strategic choice and relied on the jury to follow the instructions provided to them by the Court. Their strategic decision meets the objective standard of reasonableness for competent representation laid out in *Strickland*. The Commissioner's report as to Defendant's third claim for postconviction relief is hereby accepted.

VI. CONCLUSION

Therefore, for the foregoing reasons, the Commissioner's Report, including its Recommendation, is **ACCEPTED** by the Court. Defendant's Motion for Postconviction Relief is hereby **DENIED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

oc: Prothonotary
cc: Investigative Services

⁶⁷ *Monroe*, 2014 WL 934446, at *9.