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

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| STATE OF DELAWARE | ) | |
| | ) | |
| v. | ) | I.D. No. 9905011124 |
| | ) | |
| GREGORY A. DENSTON, | ) | |
| | ) | |
| Defendant. | ) | |

UPON CONSIDERATION OF DEFENDANT'S FOURTH
*PRO SE* MOTION FOR POSTCONVICTION RELIEF
**DENIED**

Submitted: August 18, 2008
Decided: October 20, 2008

This 20th day of October, 2008, it appears to the Court that:

1. On September 5, 2001, Defendant Gregory A. Denston ("Denston") pleaded guilty to two counts of Criminal Solicitation in the First Degree. He was sentenced to ten years of mandatory incarceration at Level V. Denston did not appeal his conviction.

2. Denston's guilty plea was made in exchange for the State's agreement to *nolle prosse* one count of Attempted Murder in the First Degree. The charges arose out of an incident in which Denston solicited James Trump ("Trump") to participate in a plan to murder Denston's ex-wife. At the time, Denston was already incarcerated on a thirty-year term for Attempted Murder in the First Degree and Possession of a Deadly

Weapon During the Commission of a Felony after severely beating his then-wife with a baseball bat. Trump, a fellow inmate, notified prison officials of Denston's plan. Officials arranged to have Trump provide Denston with the phone number of an undercover police officer who posed as a "hitman." Denston initiated a call to the undercover officer, which was recorded. During the call, Denston instructed the officer to shoot his ex-wife, made payment arrangements, and addressed other details of the plan, including how he would receive an adequate "guarantee" or confirmation of his ex-wife's death.[1]

3. This is Denston's fourth Motion for Postconviction Relief. His first *pro se* Motion for Postconviction Relief was filed on March 24, 2003. After receiving a response to Denston's motion from both the State and Denston's prior counsel, the Court denied the motion. The Court found that: (1) Denston entered his plea knowingly, voluntarily, and intelligently; (2) Denston's counsel had not failed to investigate and interview witnesses; (3) counsel had not been ineffective for deciding not to file a motion to suppress; and (4) counsel was not ineffective in failing to assert Denston's right to a speedy trial.[2] The Delaware Supreme Court affirmed.[3]

[1] For a more detailed recounting of the events involved in this case, see *State v. Denston*, 2003 WL 22293651 (Del. Super. Ct. Oct. 3, 2003).

[2] *Id.* at *5-10.

4. On June 8, 2006, Denston filed his second *pro se* Motion for Postconviction Relief, which was denied by this Court as time-barred and repetitive. The Delaware Supreme Court again affirmed.[4]

5. Denston's third Motion for Postconviction Relief, filed on May 8, 2008, argued that his conviction for two counts of Criminal Solicitation should have been overturned because his conversation with the undercover officer was illegally recorded without judicial authorization. Denston claimed that interception of the phone call violated 11 *Del. C.* § 1336. This Court found that Denston's claim was both time-barred and duplicative of prior claims raised in his earlier postconviction motions. Moreover, the Court observed that not only were Denston's arguments irrelevant after he had entered a guilty plea, they would not have succeeded on the merits if there had been occasion to determine the admissibility of the recorded conversation.[5]

6. Denston filed this, his fourth *pro se* Motion for Postconviction Relief, on August 18, 2008. The instant motion is copied nearly verbatim

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[3] *Denston v. State*, 846 A.2d 238, 2004 WL 344316 (Del. Feb. 17, 2004) (TABLE).

[4] The Supreme Court's decision was apparently issued under the caption *Dentson v. State*. *Dentson v. State*, 909 A.2d 594, 2006 WL 2846970 (Del. Oct. 2, 2006) (TABLE).

[5] *State v. Denston*, 2008 WL 2174410, at *2 (Del. Super. May 20, 2008).

from his third Motion for Postconviction Relief and repeats his claims that his conversation with the undercover officer was unlawfully intercepted without judicial authorization and should have been suppressed under 11 *Del. C.* § 1336. The only apparent change in this fourth motion is Denston's addition of a sentence alleging that the interception of his conversation and the failure to suppress the evidence of it "was a due process violation under the Fourteenth Amendment of the United States Constitution."[6]

7. Before addressing the substantive merits of any claim for postconviction relief, the Court must determine whether the defendant has satisfied the procedural requirements of Superior Court Criminal Rule 61 ("Rule 61").[7] To protect the procedural integrity of Delaware's rules, the Court will not consider the merits of a postconviction claim that fails any of Rule 61's procedural requirements.[8]

8. Rule 61(i) establishes four procedural bars to motions for postconviction relief: (1) the motion must be filed within three years of a

[6] Docket 62 (Mem. in Support of Def.'s Mot. for Postconviction Relief), at 4.

[7] *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). *See also Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *State v. Mayfield*, 2003 WL 21267422, at *2 (Del. Super. June 2, 2003).

[8] *State v. Gattis*, 1995 WL 790951, at *3 (Del. Super. Dec. 28, 1995) (citing *Younger*, 580 A.2d at 554).

final judgment of conviction;[9] (2) any grounds for relief which were not asserted previously in any prior postconviction proceeding are barred; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules; and (4) any basis for relief must not have been formerly adjudicated in any proceeding. However, a defect under Rule 61(i)(1), (2), or (3) will not bar a movant's "claim that the court lacked jurisdiction or . . . 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."[10] In addition, the procedural bars of (2) and (4) may be overcome if "reconsideration of the claim is warranted in the interest of justice."[11]

9. Denston's claim fails the procedural bars of Rule 61. The instant motion is clearly repetitive, as it essentially reproduces his previous Motion for Postconviction Relief. In the absence of any new arguments from Denston, the Court can reach no new conclusions but instead refers to

[9] The motion must be filed within three years if the final order of conviction occurred before July 1, 2005, and within one year if the final order of conviction occurred on or after July 1, 2005. *See* Rule 61, annot. *Effect of amendments*.

[10] Super. Ct. Crim. R. 61(i)(5).

[11] *Id.* R. 61(i)(4).

its earlier decisions denying Denston's previous motions for postconviction relief.[12] As this Court has previously held, Denston entered a valid guilty plea, which eliminated any need for the State to present evidence against him and precluded him from arguing that evidence should have been suppressed. Even if this were not the case, the wiretap evidence he challenges would have been admissible.[13]

10. To the extent that Denston attempts to tack a due process claim on to his duplicated motion with a single conclusory sentence to differentiate it from his third postconviction motion, this extension of his earlier arguments is without merit. Denston's Fourteenth Amendment rights were not violated when he knowingly and voluntarily pleaded guilty and thereby gave up his right to seek suppression of the evidence against him,[14] nor

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[12] *Denston*, 2008 WL 2174410.

[13] *Denston*, 2003 WL 22293651, at *6 ("Suppression was not an issue in this case because the State had a tape recording of Defendant's telephone call from prison in which he blatantly, and voluntarily, solicited an undercover police officer to kill his wife."); *Denston*, 2008 WL 2174410, at *2. Former 11 *Del. C.* § 1336, upon which Denston relies, stated that "*It shall not be unlawful* . . . for . . . [a] person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or 1 of the parties to the communication has given prior consent to such interception." In addition, section 1336 included procedures for obtaining judicial authorization for interception of communications to which law enforcement officers were *not* parties, which are irrelevant to this case since Denston was communicating with an undercover officer. 11 *Del. C.* § 1336 (1998) (emphasis added), *repealed by* 72 Del. Laws ch. 232, § 1 (effective July 23, 1999).

[14] *See, e.g.*, *Ayers v. State*, 803 A.2d 427, 2002 WL 1751794, at *2 (Del. July 24, 2002) (TABLE) ("It is well-settled . . . that a voluntary guilty plea constitutes a waiver of any alleged defects or errors occurring prior to the entry of the plea.").

would they have been violated if there had been occasion to present the challenged evidence.

11. For the foregoing reasons, Denston's fourth Postconviction Motion for Relief is hereby **DENIED.** Furthermore, in light of Denston's duplication of his previous motion, the Court emphasizes that repetitive motions are barred under Rule 61(i) and will not receive consideration.

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Peggy L. Ableman, Judge

Original to Prothonotary
cc: Gregory A. Denston