

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE                    )  
                                                  )  
                  v.                            )     I.D. No. 9804001318  
                                                  )  
LEROY SHELLEY,                         )  
                                                  )  
                  Defendant.                )

Submitted: April 30, 2026  
Decided: May 18, 2026

*Upon Defendant LeRoy Shelley's Fifth Motion for Postconviction Relief*  
**SUMMARILY DISMISSED**

*Upon Defendant LeRoy Shelley's Motion for Bail Pending Appeal*  
**MOOT**

**ORDER**

Brian J. Robertson, Esquire, Deputy Attorney General, Department of Justice, 820  
N. French St., Wilmington, Delaware, Attorney for the State.

LeRoy Shelley, *pro se*, Smyrna, DE.

**WHARTON, J.**

This 18th day of May, 2026 upon consideration of Defendant LeRoy Shelley's ("Shelley") fifth Motion for Postconviction Relief,<sup>1</sup> his Motion for Bail Pending Appeal,<sup>2</sup> and the record in this matter, it appears to the Court that:

1. After waiving his right to counsel and representing himself at trial, Shelley was convicted by a jury in 2007 of two counts each of Robbery First Degree, Kidnapping Second Degree, and Possession of a Firearm During the Commission of a Felony, as well as a single count of Conspiracy Second Degree. He was sentenced on March 6, 2008, but did not file a direct appeal. Instead, Shelley embarked on what has turned out to be a steady course of futile litigation when he first moved for postconviction relief in 2009. That motion was denied as procedurally defaulted because Shelley's claims could have been raised on direct appeal had he filed one.<sup>3</sup> Shelley's appeal to the Delaware Supreme Court of that order was dismissed as untimely.<sup>4</sup> After an unsuccessful attempt at federal *habeas corpus* relief in 2010,<sup>5</sup> Shelley filed his first attempt to vacate his sentence. That motion, in which he argued that his re-indictment was defective, causing the court to lack jurisdiction, was treated as a second postconviction relief motion and was denied again for procedural default.<sup>6</sup>

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<sup>1</sup> D.I.125.

<sup>2</sup> D.I. 124.

<sup>3</sup> D.I. 28.

<sup>4</sup> *Shelley v. State*, 2010 WL 1627335 (Del. Apr. 21, 2010).

<sup>5</sup> *Shelley v. Delaware*, 2012 WL 379907 (D. Del. 2012).

<sup>6</sup> D.I. 61.

The Delaware Supreme Court affirmed that decision.<sup>7</sup> This Court summarily dismissed his third postconviction relief motion on October 27, 2014.<sup>8</sup> This Court denied Shelley's Motion for Modification of Sentence on March 7, 2017.<sup>9</sup> The Supreme Court affirmed.<sup>10</sup> This Court denied his Petition for a Writ of Habeas Corpus on April 20, 2017.<sup>11</sup> The Supreme Court affirmed.<sup>12</sup> A Motion for Sentence Clarification was denied on October 6, 2017.<sup>13</sup> The Supreme Court affirmed.<sup>14</sup> Shelley's Motion to Recuse was denied on July 13, 2018.<sup>15</sup> The Supreme Court dismissed his appeal.<sup>16</sup> A Motion to Vacate Sentence was denied on July 12, 2019.<sup>17</sup> A second Motion to Vacate was denied on July 31, 2019.<sup>18</sup> That decision was affirmed on January 7, 2020.<sup>19</sup> His fourth postconviction relief motion was denied by this Court on January 28, 2020.<sup>20</sup> That denial was affirmed on June 30, 2020.<sup>21</sup> On March 26, 2021, Shelley filed a Motion for Bail Pending Appeal.<sup>22</sup> That motion was

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<sup>7</sup> *Shelley v. State*, 2012 WL 3656427 (Del. 2012).

<sup>8</sup> *Shelley v. State*, 2014 WL 5713236 (Del. Super. Ct. Oct. 27, 2014).

<sup>9</sup> D.I. 53.

<sup>10</sup> *Shelley v. State*, 2017 WL 2686551 (Del. Jun. 21, 2017).

<sup>11</sup> D.I. 63.

<sup>12</sup> *Shelley v. State*, 2017 WL 3122316 (Del. Jul. 17, 2017).

<sup>13</sup> D.I. 66.

<sup>14</sup> *Shelley v. State*, 2018 WL 3173852 (Del. Jun. 26, 2018).

<sup>15</sup> D.I. 74.

<sup>16</sup> *Shelley v. State*, 2018 WL 6331623 (Del. Dec. 3, 2018).

<sup>17</sup> *State v. Shelley*, 2019 WL 3248617 (Del. Super. Ct. July 12, 2019).

<sup>18</sup> *State v. Shelley*, 2019 WL 3458725 (Del. Super. Ct. July 31, 2019).

<sup>19</sup> *Shelley v. State*, 2020 WL 91816 (Del. Jan. 7, 2020).

<sup>20</sup> *State v. Shelley*, 2020 WL 4911441 (Del. Super. Ct. Jan. 28, 2020).

<sup>21</sup> *Shelley v. State*, 2020 WL 2989264 (Jun. 3, 2020).

<sup>22</sup> D.I. 96.

denied on April 5, 2021.<sup>23</sup> This Court denied a Motion for Correction of an Illegal Sentence on December 4, 2023.<sup>24</sup> That decision was affirmed on May 13, 2024.<sup>25</sup> This Court denied another Motion to Correct an Illegal Sentence on May 20, 2025,<sup>26</sup> and another after that on June 12, 2025.<sup>27</sup> Shelley unsuccessfully appealed the latter decision.<sup>28</sup> Even before that appeal was resolved, Shelley moved again to correct an illegal sentence.<sup>29</sup> He was advised that this Court had no jurisdiction to entertain that motion, but he was free to renew it if his appeal was unsuccessful.<sup>30</sup> He filed another Motion to Correct an Illegal Sentence on February 12, 2026.<sup>31</sup> That motion was denied on February 13, 2026.<sup>32</sup> On April 14, Shelley moved the Court to void his fines imposed when he was sentenced in 2008.<sup>33</sup> While denying that request in most respects, the Court did vacate a \$70.00 security fee as an *ex post facto* portion of his sentence.<sup>34</sup> His most recent Motion for Correction of an Illegal Sentence was filed on April 23, 2023.<sup>35</sup> It was denied on April 28, 2026.<sup>36</sup>

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<sup>23</sup> D.I. 97.

<sup>24</sup> *State v. Shelley*, 2023 WL 8373204 (Del. Super. Ct. Dec. 4, 2023).

<sup>25</sup> *Shelley v. State*, 2024 WL 21548632 (Del. May 13, 2024).

<sup>26</sup> D.I. 112.

<sup>27</sup> *State v. Shelley*, 2025 WL 1664001 (Del. Super. Ct. June 12, 2025).

<sup>28</sup> *Shelley v. State*, 2025 WL 3012881 (Del. Oct. 27, 2025).

<sup>29</sup> D.I. 119.

<sup>30</sup> D.I. 120.

<sup>31</sup> D.I. 127.

<sup>32</sup> D.I. 128.

<sup>33</sup> D.I. 133.

<sup>34</sup> D.I. 134.

<sup>35</sup> D.I. 135.

<sup>36</sup> *State v. Shelley*, 2026 WL 1170408 (Del. Super. Ct. Apr. 28, 2026).

2. Apparently tiring of Rule 35(a) motions, Shelley turns to Rule 61 for the fifth time. He filed that motion on January 27, 2026.<sup>37</sup> In this motion, he argues that an unpublished opinion by a federal district court judge more than 35 years ago in *Brian Smith v. Walter Redman*,<sup>38</sup> “declared Delaware robbery laws UNCONSTITUTIONAL among the reasons were multiplicity which violate the Double Jeopardy clause of the United States Constitution.”<sup>39</sup> He claims the case is newly discovered evidence because he “received” it on January 15, 2026.<sup>40</sup> He did not include a copy of the decision with his motion. Citing Superior Court Civil Rule 107(g) made applicable by Criminal Rule 57(d), the Court directed Shelley to provide it with a copy of *Smith* by February 27, 2026.<sup>41</sup> Shelley requested and received an extension to submit the unpublished opinion until April 30, 2026.<sup>42</sup> The deadline now has passed without Shelley providing the Court with a copy of the case. In anticipation of success on his motion for postconviction relief, Shelley also moves for bail pending a presumptive appeal by the State.<sup>43</sup>

3. Before addressing the merits of a defendant’s motion for postconviction relief, the Court must first apply the procedural bars of Superior Court Criminal Rule

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<sup>37</sup> D.I. 125.

<sup>38</sup> 1:90-cv-00060-SLR.

<sup>39</sup> D.I. 125.

<sup>40</sup> *Id.*

<sup>37</sup> D.I. 126.

<sup>42</sup> D.I. 132.

<sup>43</sup> D.I. 124.

61(i).<sup>44</sup> If a procedural bar exists, then the Court will not consider the merits of the postconviction claim.<sup>45</sup>

5. Under Delaware Superior Court Rules of Criminal Procedure, a motion for post-conviction relief can be barred for time limitations, successive motions, procedural default, or former adjudication.<sup>46</sup> A motion exceeds time limitations if it is filed more than one year after the conviction becomes final, or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right was first recognized by the Supreme Court of Delaware or the United States Supreme Court.<sup>47</sup> A second or subsequent motion is considered successive and therefore barred and subject to summary dismissal unless the movant was convicted after a trial and “pleads with particularity that new evidence exists that the movant is actually innocent” or “pleads with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant’s case and renders the conviction ... invalid.”<sup>48</sup> Grounds for relief “not asserted in the proceedings leading to the judgment of conviction” are barred as procedurally defaulted unless the movant can

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<sup>44</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>40</sup> *Id.*

<sup>46</sup> Super. Ct. Crim. R. 61(i).

<sup>47</sup> Super. Ct. Crim. R. 61(i)(1).

<sup>48</sup> Super. Ct. Crim. R. 61(i)(2); Super. Ct. Crim. R. 61(d)(2).

show “cause for relief” and “prejudice from [the] violation.”<sup>49</sup> Grounds for relief formerly adjudicated in the case, including “proceedings leading to the judgment of conviction, in an appeal, in a post-conviction proceeding, or in a federal habeas corpus hearing” are barred.<sup>50</sup>

6. The bars to relief do not apply either to a claim that the court lacked jurisdiction or to a claim that pleads with particularity that new evidence exists that creates a strong inference of actual innocence,<sup>51</sup> or that a new retroactively applied rule of constitutional law renders the conviction invalid.<sup>52</sup> This fifth motion is barred for multiple reasons. It is untimely, having been filed more than a year after Shelley’s judgment of conviction became final. It is a successive motion, his fifth, that does not satisfy the pleading requirements of Rules 61(d)(2)(i) or (d)(2)(ii). Finally, it is subject to procedural default because it raises grounds for relief not previously asserted without showing cause for relief from the procedural default and prejudice from a violation of his rights.

7. In an effort to overcome Rule 61(i)’s bars to relief, Shelley characterizes *Smith v. Redman* as newly discovered evidence. To grant a motion for a new trial based on newly discovered evidence, the trial court must conclude that: (1) the new evidence is of such a nature that it would have probably changed the result if

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<sup>49</sup> Super. Ct. Crim. R. 61(i)(3).

<sup>50</sup> Super. Ct. Crim. R. 61(i)(4).

<sup>51</sup> Super. Ct. Crim. R. 61(i)(5).

<sup>52</sup> Super. Ct. Crim. R. 61(d)(2)(i) and (ii).

presented to the jury; (2) the evidence was newly discovered, *i.e.*, it must have been discovered since trial, and the circumstances must be such as to indicate that it could not have been discovered before trial with due diligence; and (3) the evidence must not be merely cumulative or impeaching.<sup>53</sup> A 35 year old unpublished opinion from a federal court is not newly discovered evidence of Shelley's actual innocence. Not only is it not evidence – it is a legal opinion – but it is not newly discovered in the sense that it could have been discovered before trial with due diligence. Newly discovered does not mean that it was just newly discovered by Shelly.

8. Moreover, the Court is absolutely convinced that whatever *Smith* says, it does not say that Delaware's robbery statute is unconstitutional. Delaware's robbery statute has remained relatively unchanged with only minor amendments since *Smith* was decided.<sup>54</sup> In that time it is likely that hundreds, if not thousands, of defendants have been prosecuted under that statute without any judicial finding that it was "unconstitutional." Additionally, this Court recently rejected Shelley's double jeopardy/merger challenge to his sentences for two counts of robbery, an argument similar, if not identical, to his "multiplicity" argument here.<sup>55</sup>

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<sup>53</sup> *Hicks v. State*, 913 A.2d 1189, 1193–94 (Del. 2006) (citing *Lloyd v. State*, 534 A.2d 1262, 1267 (Del. 1987)).

<sup>54</sup> *Smith*'s case number, 1-90-cv-00060-SLR, indicates that it was filed in 1990.

<sup>55</sup> *State v. Shelley*, 2026 WL 1170408, at \*3. In fairness to Shelley, this motion predates that decision.

9. Summary dismissal is appropriate if 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.<sup>56</sup> It is plain from this fifth motion and the record in this case that Shelley is not entitled to relief.

**THEREFORE**, since it plainly appears from the Motion for Postconviction Relief and the record in this case that Shelley is not entitled to relief, the Motion for Postconviction Relief is **SUMMARILY DISMISSED**. Shelley's Motion for Bail Pending Appeal is **MOOT**.

**IT IS SO ORDERED.**

/s/ Ferris W. Wharton  
Ferris W. Wharton, J.

oc: Prothonotary  
cc: Investigative Services

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<sup>56</sup> Super. Ct. Crim. R. 61(d)(5).