

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	)	
	)	
v.	)	I.D. # 91009357DI
	)	
KEVIN OROPEZA,	)	
	)	
Defendant.	)	

Submitted: May 15, 2026
Decided: August 18, 2026

ORDER DENYING MOTION FOR POST CONVICTION RELIEF

Upon consideration of Defendant Kevin Oropeza’s Motion for Postconviction Relief, the Court finds that:

1. On November 9, 1992, a jury convicted Oropeza of first degree murder, first degree conspiracy, and two counts of possession of a deadly weapon during the commission of a felony (“PDWDCF”) in relation to the killing of Glen Proud by stabbing.¹ Oropeza was sentenced on December 11, 1992, to life imprisonment plus additional time. Oropeza’s conviction was affirmed on direct appeal.²

¹ *State v. Kevin Oropeza*, 91009357DI Docket Item (hereinafter “D.I.”) 22. Proud was stabbed 20 times in the neck, chest, and abdomen. Oropeza was tried as the principal in the accomplice relationship. *State v. Oropeza*, 2010 WL 1511570, at *3-4 (Del. Super. Apr. 16, 2010).

² *Oropeza v. State*, 633 A.2d 371 (TABLE) (Del. Nov. 1, 1993).

2. On February 12, 2010, Oropeza filed a *pro se* motion for postconviction relief.³ After briefing and argument, this Court denied that postconviction motion.⁴

3. Oropeza filed this second postconviction motion on July 7, 2025 (the “Second Postconviction Motion”),⁵ along with a Motion for Appointment of Counsel (the “Motion for Counsel”).⁶ The motion for appointment of counsel was denied on October 1, 2025.⁷ On October 7, 2025, a briefing schedule was set and according to that schedule the State responded on December 2, 2025.⁸ Oropeza moved for enlargement of time on December 30, 2025,⁹ which was granted on January 13, 2026, when an amended scheduling order was issued.¹⁰ Oropeza amended his motion on February 27, 2026.¹¹ The State was given an opportunity to respond to his newly raised claim and filed its response on April 14, 2026.¹² Oropeza filed his reply to that response on May 15, 2026.¹³ This matter is now ripe for decision.

³ D.I. 59.

⁴ *Oropeza*, 2010 WL 1511570.

⁵ D.I. 67.

⁶ D.I. 68.

⁷ D.I. 71.

⁸ D.I. 73, 74.

⁹ D.I. 75.

¹⁰ D.I. 76.

¹¹ D.I. 77.

¹² D.I. 78-80.

¹³ D.I. 81.

4. In this second postconviction motion, Oropeza raises three grounds for relief.¹⁴ First, Oropeza re-raises a *Bruton* claim, previously raised in his first motion for postconviction relief, but claims it was ignored by the court and therefore has not been adjudicated.¹⁵ Second, Oropeza claims the June 21, 2024, United States Supreme Court decision in *Smith v. Arizona*¹⁶ constitutes a “retroactively applicable right newly recognized after the judgment of conviction is final” recognized under Delaware Criminal Law Rule 61(i)(1) and, thus, is applicable to his case.¹⁷ Finally, Oropeza argues that the trial court erred by failing to instruct the jury pursuant to Title 11, § 274 at trial, as the State pursued an accomplice liability theory related to the homicide charge.¹⁸ The State opposes this motion, both procedurally and on its merits.

5. Before addressing the merits of a motion pursuant to Superior Court Criminal Rule 61, the Court must first apply the rule’s procedural bars.¹⁹ Finding a procedural bar precludes a reviewing court from addressing the merits of a Rule 61 claim, to “protect the procedural integrity” of the Court Rules.²⁰ A motion for postconviction relief can be procedurally barred as untimely, repetitive, for failing

¹⁴ D.I. 67 and 77.

¹⁵ D.I. 67.

¹⁶ *Smith v. Arizona*, 602 U.S. 779 (2024).

¹⁷ *Id.*

¹⁸ D.I. 77.

¹⁹ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

²⁰ *State v. Page*, 2009 WL 1141738, at *13 (Del. Super.).

to raise a claim in the proceedings leading to the judgment of conviction, and for being formerly adjudicated.²¹

6. Under Rule 61(d)(2) a second or subsequent motion for postconviction relief must be summarily dismissed, unless “the movant was convicted after a trial and the motion either, (i) pleads with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted; or (ii) 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.”²² Oropeza attempts to avoid this bar to his second claim by arguing a new rule of constitutional law should be retroactively applied. As explained below, that claim is not successful.

7. Rule 61(i)(1) precludes review of a motion for postconviction relief filed more than one year after the judgment of conviction is final.²³ A defendant's conviction is final thirty (30) days after this Court imposes its sentence, or when the Delaware Supreme Court issues a mandate or order following a direct appeal.²⁴ The Delaware Supreme Court affirmed Oropeza's conviction on November 1, 1993. The

²¹ Super. Ct. Crim. R. 61(i)(1)-(4).

²² Super. Ct. Crim. R. 61(i)(2).

²³ *Id.* at (1).

²⁴ *Id.* at (1)-(2).

instant motion was filed almost three decades after his judgment of conviction became final and is procedurally barred from review as untimely.

8. Under Rule 61(i)(3) claims that are “not asserted in the proceedings leading to the judgment of conviction” are barred as procedurally defaulted unless the defendant can show cause for relief and resulting prejudice.²⁵ To do this, Oropeza must “demonstrate that an external impediment prevented him from raising [his current claim] earlier.”²⁶ He has not done so. Further, Rule 61(i)(4) bars “any ground for relief that was formerly adjudicated whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding” unless reconsideration is warranted in the interest of justice.²⁷ No such showing has been made here.

Claim 1: A *Bruton* violation occurred warranting postconviction relief

9. Oropeza attempts to avoid the Rule 61(i)(4) bar by arguing that his first claim for relief, that *Bruton v. United States*²⁸ prohibits the playing of his co-defendant’s statement at trial, was not fully ruled upon by the Court. The State correctly argues that this claim is without merit. Oropeza attempts to avoid the procedural bars of Rule 61(i)(1), (i)(2)(a), (i)(3), and (i)(4) by arguing a creative

²⁵ Super. Ct. Crim. R. 61(i)(3).

²⁶ *Morrison v. State*, 2022 WL 790507, at *6 (Del. 2002) (citing *Younger*, 580 A.2d at 556).

²⁷ Super. Ct. Crim. R. 61(i)(4).

²⁸ *Bruton v. United States*, 391 U.S. 123, 137 (1968).

jurisdictional challenge: that the Court was stripped of its jurisdiction when *Bruton* was violated. As a result, Oropeza argues subsequent Court actions were illegal, as they were in violation of his constitutional rights. This argument defies the court's role, is simply incorrect, and does not afford Oropeza relief from the applicable procedural bars.

10. Further, the facts here demonstrate that Oropeza specifically waived any *Bruton* challenge years ago during trial. It was Oropeza's counsel who sought, strategically, to show the out of court video statements made by his co-defendant to the jury as a defense strategy. As such, even could Oropeza avoid the procedural bars, which he cannot, his claim is without merit and is waived. Oropeza was convicted in 1992, his first postconviction motion was filed in 2010. He has provided nothing in his lengthy filings either to excuse his delayed presentment of this issue, or to address the waiver of this claim.

11. Oropeza's first postconviction motion for relief, which argued counsel was ineffective for presenting this testimony, in violation of *Bruton*, was denied by the Superior Court of Delaware on April 16, 2010 and affirmed by the Delaware Supreme Court on February 17, 2021.²⁹ Even if Oropeza can show ineffective assistance of counsel for its strategy to play the co-defendant's statement, he fails to argue, nonetheless show how there is a reasonable probability of a different outcome

²⁹ *Oropeza v. State*, 15 A.3d 217 (Del. 2011).

had his co-defendant's statement not been played. Oropeza was identified by multiple witnesses, and there was ample evidence, including blood tests, that placed him at the scene of the crime. Thus, Oropeza's first claim fails.

Claim 2: *Smith v. Arizona* should be retroactively applied to provide postconviction relief

12. Next Oropeza raises a claim that the 2024 United State Supreme Court of *Smith v. Arizona* excuses his otherwise barred claim that the laboratory report introduced at trial was improper. In order for Oropeza to be successful in escaping the applicable procedural bars, he must show that *Smith* established a newly cognizable constitutional rule of law – which it did – but that rule of law is both applicable to his case – which it is not – and is retroactive – which it is not. At his trial, the State introduced a blood analysis report through the testimony of someone who worked at the lab but did not call the actual analyst to testify to the results. Through this testimony, the State introduced a report regarding the potential blood types of blood samples taken both from Proud's shirt and a towel from Oropeza's apartment.³⁰ The non-analytical lab worker provided lay testimony regarding lab protocol and procedures and testified that the analyst's conclusions could not exclude Oropeza's blood because the presence of Proud's blood would mask

³⁰ Appendix to State's Response in Opposition, pp. B19-26.

Oropeza's.³¹ Oropeza argues that this testimony was violative of the holding in *Smith*.

13. In *Smith*, the prosecution called an expert to testify to drug analysis conclusions performed by a non-testifying expert, as the non-testifying expert's opinion formed the basis for the overall conclusion reached by the testifying expert. This was found to violate the Confrontation Clause, as the underlying report constituted hearsay. The case was then remanded for an analysis regarding whether the report itself was testimonial.³² While the State has its own creative arguments here about how the blood analysis testimony presented was not expert testimony, Oropeza cannot escape this procedural bar because *Smith* has no retroactive application.

14. Delaware Courts follow the structure set forth in the United States Supreme Court case *Teague v. Lane*, to determine retroactive application of new rules of law.³³ The State seemingly concedes that *Smith* set forth a new constitutional rule and engaged in the retroactivity analysis. Without a full analysis, assuming this is the case, the State's further analysis is correct. In *Wharton v. Bocking*,³⁴ the United States Supreme Court addressed the retroactivity of *Crawford*

³¹ *Id.*

³² *Smith*, 602 U.S. 783.

³³ *Teague v. Lane*, 489 U.S. 288, 311 (1989).

³⁴ 549 U.S. 406 (2007).

v. Washington.³⁵ *Crawford*, the predicate ruling upon which *Smith* is based, examined hearsay testimony and its interplay with the Confrontation Clause. *Crawford* held inadmissible a testimonial out of court statement by an unavailable declarant, unless a defendant previously had the opportunity to be cross-examined.³⁶

15. *Whorton* reviewed and analyzed *Crawford*'s retroactivity and held it was not.³⁷ The *Whorton* Court found that it was "clear and undisputed" that *Crawford* presented a new procedural rule, as it addressed the manner in which a defendant's culpability is determined.³⁸ The question then turns to whether the new procedural rule is "watershed."³⁹ It is not.

16. Once again, *Whorton* is instructive on this issue. *Whorton* concluded that *Crawford* did not establish a watershed procedural rule.⁴⁰ Therefore, the same result must be found with respect to *Smith*.

To qualify as a watershed [rule] under the [*Teague*] exception, a rule must meet two requirements. First, the rule 'must be necessary to prevent an impermissibly large risk of an inaccurate conviction.' Second, the 'rule must alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding.'⁴¹

³⁵ 541 U.S. 36 (2004).

³⁶ *Id.*

³⁷ *Whorton*, 549 U.S. at 417.

³⁸ *Id.* *Smith* did not establish a new substantive rule – one which alters the range of conduct for which classes of people can be punished. *Schriro v. Summerlin*, 542 U.S. 348 (2004).

³⁹ *Teague*, 489 U.S. at 311.

⁴⁰ *Whorton*, 488 U.S. at 418.

⁴¹ *Richardson v. State*, 3. A.3d 233, 239 (Del. 2010), citing *Whorton*, 549 U.S. at 418 (quoting *Schriro v. Summerlin*, 542 U.S. 348, 356 (2004)).

Oropeza has not presented any persuasive argument that this standard has been met. Nor can he. Therefore, as *Smith* is not retroactively applied, Oropeza cannot escape the procedural bars and his second claim fails.

Claim 3: The failure of the trial court to instruct the jury pursuant to 11 Del. C. § 274 warrants postconviction relief

17. Finally, Oropeza's claim that the Court erred by failing to give a Section 274 Instruction at his trial similarly fails. Section 274 requires a specific instruction be given to a jury when the State proceeds under an accomplice liability theory.⁴² In his attempt to avoid the procedural bars that apply – Rule 61(i)(1), untimely; Rule 61(i)(2)(a), successive; Rule 61(i)(3) not raised in the previous proceedings; and/or Rule 61(i)(4) previously adjudicated – Oropeza re-argues the aforementioned attack on this Court's jurisdiction. Once again, Oropeza's argument, while creative, is not legally correct. Even assuming there was a constitutional defect in the proceedings, it is nonsensical and illogical that the Superior Court would be divested of jurisdiction to hear and sentence Oropeza. The very fact that there is a Superior Court Criminal Rule in existence to address illegal sentences belies this claim.⁴³

18. While Oropeza cannot escape the procedural bars that prohibit this claim, it additionally fails on its merits. In his first postconviction motion, Oropeza

⁴² *Allen v. State*, 970 A.2d 203 (Del. 2009).

⁴³ *See* Superior Court Criminal Rule of Procedure 35.

claimed his trial counsel was ineffective for failing to seek a Section 274 instruction.⁴⁴ This Court denied such a finding, noting that “the facts of this case [did not warrant] such an instruction.”⁴⁵ As already noted, this Court’s decision was affirmed on appeal. Nothing has been presented to argue otherwise that would warrant this Court, now, to conclude otherwise. The now-complained of jury instruction was not applicable to Oropeza’s trial, as he was being tried as the principal actor. Thus, even if not procedurally barred, Oropeza’s third claim fails on its merits.

19. THEREFORE, for the aforementioned reasons, Oropeza’s second motion for postconviction relief is **DENIED**.

IT IS SO ORDERED.



Danielle J. Brennan, Judge

Original to Prothonotary

cc: Kevin Oropeza, *pro se*, SBI# 00272510
Jordan Braunsberg, Esquire, Department of Justice

⁴⁴ *State v. Oropeza*, 2010 WL 1511570 at *1 (stating that the Mr. Oropeza was arguing for ineffective assistance of counsel for “(a) not seeking an instruction under 11 *Del. C.* § 274...”).

⁴⁵ *Id.*