

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
	)	
v.	)	Cr. ID. No. 1212015998A&B
	)	
JOSHUA STEPHENSON,	)	
	)	
Defendant.	)	

Submitted: May 21, 2026
Decided: August 28, 2026

**COMMISSIONER’S REPORT AND RECOMMENDATION ON
DEFENDANT’S SIXTH *PRO SE* MOTION FOR POSTCONVICTION
RELIEF AND MOTION FOR APPOINTMENT OF POSTCONVICTION
COUNSEL**

Timothy McGuire, Deputy Attorney General, Delaware Department of Justice,
Wilmington, Delaware, Attorney for the State.

Joshua Stephenson, Howard R. Young Correctional Institution, Wilmington,
Delaware.

O’CONNOR, M., Commissioner.

This 28th day of August, 2026, upon consideration of Defendant Joshua Stephenson's *pro se* Motion for Postconviction Relief,¹ Defendant's Motion for Appointment of Counsel,² and the record in this matter, the following is my Report and Recommendation.

I. PROCEDURAL BACKGROUND

Defendant Joshua Stephenson ("Defendant") was arrested on December 25, 2012 and charged with Murder First Degree; Possession of a Firearm During the Commission of a Felony ("PFDCF"); Possession of a Deadly Weapon (firearm) by a Person Prohibited ("PDWBPP"); Assault Third Degree; and Endangering the Welfare of a Child.³ On February 4, 2013, Defendant was indicted by the New Castle County Grand Jury.⁴ On June 24, 2014, Defendant signed a waiver of jury trial on the PDWBPP offense, which had been severed from the other charges.⁵ On the same date, Defendant waived his right to a speedy trial.⁶

Defendant's jury trial began on January 6, 2015. On January 13, 2015,⁷ the jury found Defendant guilty of Murder Second Degree (a lesser-included-offense of

¹ Docket Item ("D.I.") 259.

² D.I. 260.

³ D.I. 1. Unless otherwise noted, all Docket Item references relate to this Court's docket in Superior Court Case No. 1212015998A.

⁴ D.I. 3.

⁵ D.I. 59.

⁶ *Id.*

⁷ D.I. 71.

Murder First Degree), PFDCF, and Endangering the Welfare of a Child.⁸ With respect to the PDWBPP offense, this Court found Defendant guilty of PDWBPP.⁹ On June 17, 2015, this Court sentenced Defendant to life imprisonment plus twenty-six years, suspended after serving life plus twenty years, followed by probation.¹⁰

On June 30, 2015, Defendant filed a notice of appeal.¹¹ In his direct appeal, Defendant argued this Court erred by “denying [Defendant’s] request for a self-defense jury instruction and by excluding the testimony of psychiatrist Dr. Susan Rushing to show that [Defendant’s] psychiatric symptoms might have affected his perceptions of danger on the night of the shooting, supporting a claim of self-defense.”¹² On July 13, 2016 the Delaware Supreme Court (“Supreme Court”) affirmed the judgment of this Court.¹³

⁸ *Id.* On January 12, 2015, this Court reduced the Assault Third Degree charge reduced to Offensive Touching, finding there was insufficient evidence produced at trial to allow the State to present the Assault Third Degree charge to the jury. *Id.* The jury was ultimately instructed on the lesser-included-offense of Offensive Touching, and the jury acquitted Defendant of that offense. *Id.* (see Verdict Sheet).

⁹ *Id.*

¹⁰ D.I. 85.

¹¹ D.I. 86.

¹² *Stephenson v. State*, 2020 WL 821418, at *2 (Del. Feb. 18, 2020).

¹³ *Stephenson v. State*, 2016 WL 3568170 (Del. June 22, 2016) (affirming on the basis of the Superior Court’s memorandum opinion in *State v. Stephenson*, 2014 WL 2891626 (Del. Super. Ct. June 20, 2014)).

On August 3, 2016, Defendant filed his first *pro se* Motion for Postconviction Relief,¹⁴ and a Motion for Appointment of Postconviction Counsel.¹⁵ The motion for appointment of counsel was granted,¹⁶ and Julianne Murray, Esquire was appointed to represent Defendant.¹⁷

On October 31, 2017, postconviction counsel filed an amended motion for postconviction relief raising one claim: trial counsel was ineffective for failing to advise Defendant to testify in support of his self-defense claim.¹⁸ On April 18, 2019, this Court denied Defendant's motion for postconviction relief.¹⁹

On May 23, 2019, Defendant appealed the Superior Court's denial of the motion for postconviction relief, arguing trial counsel was ineffective because she advised him not to testify at trial.²⁰ The Supreme Court concluded:

Stephenson's claim [did] not overcome the strong presumption that [trial] counsel's performance was professionally reasonable and that it was consistent with 'sound trial strategy.' Counsel was in the difficult position of balancing the potential benefit of Stephenson's testimony – explaining his version of the events that occurred on the night Ashley died – against the risks of cross-examination, the introduction of Stephenson's criminal history, and the potential loss of a lesser-

¹⁴ D.I. 118. In Defendant's *pro se* motion, he alleged nine postconviction claims, including claims of ineffective assistance of counsel, prosecutorial misconduct, and judicial misconduct. *Id.*, p. 3-4.

¹⁵ D.I. 119.

¹⁶ D.I. 123.

¹⁷ D.I. 129.

¹⁸ D.I. 137. In Defendant's Reply Brief (D.I. 141) to the State's Response to Defendant's Amended Motion for Postconviction Relief (D.I. 140), postconviction counsel asserted a second claim Defendant insisted be presented – that trial counsel was ineffective for not filing a motion for a competency hearing. D.I. 141, p. 5-7.

¹⁹ D.I. 176.

²⁰ *Stephenson v. State*, 2020 WL 821418, at *2.

included-offense verdict. Counsel’s advice was not objectively unreasonable, nor was it inconsistent with sound trial strategy.”²¹

The judgment of this Court was affirmed.²²

On March 28, 2020, Defendant filed a pro se Petition for a Writ of Habeas Corpus in the United States District Court for the District of Delaware.²³ In what was ultimately received as an amended petition for habeas relief, Defendant raised three claims.²⁴ First, he argued this Court violated his constitutional right to call a witness by disallowing Dr. Susan Rushing, MD to testify on his behalf.²⁵ Second, Defendant argued trial counsel provided ineffective representation at sentencing by presenting mitigation evidence regarding his mental illness.²⁶ Finally, Defendant asserted the ineffective assistance of trial counsel claim which allegedly occurred during the bifurcated bench trial on the PDWBPP charge – Defendant claimed trial counsel deprived him of his right to self-autonomy by waiving his right to testify.²⁷

²¹ *Id.* at *3.

²² *Id.* at *4.

²³ *Stephenson v. May*, 2023 WL 2428902 (D. Del. Mar. 9, 2023), *appeal denied* 2023 WL 6442924, at *1 (3d Cir. July 24, 2023), *cert. denied* 144 S. Ct. 505 (Mem) (Dec. 11, 2023). The record in the District Court also reflects Defendant filed a subsequent Petition for a Writ of Habeas Corpus which the federal district court identified as a “second and incomplete § 2254 petition.” *Stephenson v. May*, 2023 WL 3355541, at *1 (D. Del. April 6, 2023). This second motion was dismissed on procedural grounds. *Id.* at *1.

²⁴ *Id.*, fn. 4.

²⁵ *Id.* at *5-8.

²⁶ *Id.* at *8-11.

²⁷ *Id.* at *13-14.

On March 9, 2023, the District Court for the District of Delaware denied Defendant's Amended Motion for a Writ of Habeas Corpus.²⁸

On July 6, 2020, Defendant filed a second *pro se* motion for postconviction relief in this Court.²⁹ Therein, Defendant claimed trial counsel violated his Sixth Amendment autonomy interest to decide the objective of his defense, and he contended the Supreme Court “recently recognized new procedures for [the] application of Guilty But Mentally Ill (GBMI) statute making them retroactively applicable to” him.³⁰

On January 4, 2021, Defendant filed a third *pro se* motion for postconviction relief, which was virtually identical to his July 6, 2020 filing.³¹ Defendant also filed a motion to stay the proceeding to afford the Supreme Court an opportunity to address his retroactivity argument raised regarding the GBMI statute.³²

On April 19, 2021, this Court issued an Order of Reference appointing Commissioner Lynne Parker to assist in deciding Defendant's pending postconviction motion(s),³³ and on May 28, 2021, Commissioner Parker issued a Report and Recommendation which advised this Court should deny Defendant's

²⁸ *Id.* at *14.

²⁹ D.I. 198.

³⁰ *Id.*, p. 3.

³¹ *See* D.I. 198. These postconviction motions (D.I. 198 and D.I. 203) are virtually identical.

³² D.I. 206.

³³ D.I. 209.

pending postconviction motion(s).³⁴ Applying the procedural bars of Rule 61(i)(1)-(4), the Commissioner concluded Defendant's motions were subject to summary dismissal as they were untimely filed, successive, procedurally defaulted and/or formerly adjudicated.³⁵ More particularly, Commissioner Parker concluded Defendant could not overcome the procedural bar of Superior Court Criminal Rule 61(i)(2)³⁶ which barred the consideration of successive postconviction motion(s) unless a defendant could satisfy the requirements of Rule 61(d)(2)(i) and/or (ii) to obtain relief – that is to say the Defendant failed to plead with particularity “that any *new* evidence exists that creates a strong inference that he is actually innocent of the charges for which he was convicted or that there is a *new* rule of law made retroactive to cases on collateral review that would render his conviction invalid.”³⁷ Defendant's

³⁴ *State v. Stephenson*, 2021 WL 2211995 (Del. Super. Ct. May 28, 2021).

³⁵ *See Stephenson*, 2021 WL 2211995 at *5-6.

³⁶ Superior Court Criminal Rule (“Rule”) 61(i)(2) provides:

(i) No second or subsequent motion is permitted under this Rule unless that second or subsequent motion satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule.

As referenced in Rule 61(i)(2), Rule 61(d)(2) imposes the following pleading requirements:

(2) *Second or subsequent postconviction motions.* A second or subsequent motion under this rule shall 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 or death sentence invalid.

³⁷ *State v. Stephenson*, 2021 WL 2211995, at *4 (*adopted State v. Stephenson*, Cr. ID No. 1212015998A&B ORDER (Del. Super. Ct. August 20, 2021) (D.I. 215)).

failure to allege the existence of new evidence, which created a strong inference of his actual innocence, or his inability to identify a new rule of constitutional law that created a strong inference of his actual innocence, was fatal to his pending postconviction motion(s).³⁸ And it is fatal to the present motion before this Court.

On May 28, 2024, Defendant filed a fourth *pro se* motion for postconviction relief.³⁹ In this motion, Defendant raised several claims, including: a violation of his compulsory right to a witness pursuant to D.R.E. 404(b); an equitable tolling claim; a suppression of favorable or exculpatory evidence claim; and an actual innocence claim based on his belief that he possessed clear and convincing evidence that proves a justification defense (pursuant to 11 *Del. C.* § 464) with respect to him shooting the victim; an ineffective assistance of counsel claim; a claim of a Double Jeopardy violation; and a claim regarding “Exculpatory Evidence.”⁴⁰ On May 28, 2024, this Court again referred the consideration of Defendant’s fourth *pro se* postconviction motion to Commissioner Parker.

On August 1, 2024, Commissioner Parker issued a second Report and Recommendation, finding that Defendant’s May 28, 2024 postconviction motion should be summarily dismissed for the same reasoning as the dismissal of the July

³⁸ *Id.* Defendant also failed to demonstrate the existence of a new rule of law, as he asserted was announced by the Supreme Court in *Taylor v. State*, 213 A.3d 560 (Del. 2019), as the Supreme Court merely clarified that under the GBMI statute (11 *Del. C.* § 408) a defendant has the final say as to whether to withdraw a GBMI plea before the plea is accepted by the court.” *Id.*

³⁹ D.I. 225.

⁴⁰ *Id.*

6, 2020 motion.⁴¹ Specifically, Defendant could not overcome the procedural hurdles attendant to satisfying the prohibition of successive motions for postconviction relief pursuant to Rule 61(i)(2), and thus, his motion was subject to summary dismissal.⁴²

On November 6, 2025, Defendant filed a fifth *pro se* Motion for Postconviction Relief.⁴³ In this motion, Defendant asserted four claims: (1) a violation of Double Jeopardy; (2) unnecessary delay in Indictment; (3) a challenge regarding the elements of Murder First Degree as they relate to the lesser-included offense conviction for Murder Second Degree; and (4) ineffective assistance of counsel for failure to file a motion to dismiss for unreasonable delay.⁴⁴ On November 26, 2025, Defendant filed a motion to dismiss the November 6, 2025 postconviction motion because he “filed frivolous grounds for ineffective assistance of counsel claims.”⁴⁵ On December 4, 2025, at Defendant’s request, this Court entered an Order dismissing Defendant’s November 6, 2025 *pro se* motion for postconviction relief.⁴⁶

⁴¹ *State v. Stephenson*, 2024 WL 3634264 (Del. Super. Ct. Aug. 1, 2024).

⁴² *Id.* at *4-6.

⁴³ D.I. 248.

⁴⁴ *Id.*

⁴⁵ D.I. 254. Defendant also sought dismissal of the pending postconviction motion in subsequent correspondence filed with the Court dated December 1, 2025 (D.I. 256) and December 12, 2025 (D.I. 257).

⁴⁶ D.I. 255.

On January 27, 2026, this Court received Defendant’s sixth *pro se* motion for postconviction relief,⁴⁷ which asserted three grounds for relief. First, Defendant alleged ineffective assistance of counsel – trial counsel failed to call Nakeem Watson (“Watson”) as a witness at trial to testify, he argues, that Watson claimed victim Myron Ashley murdered “his best friend Mandela” with an accomplice on West 28th Street in Wilmington. Defendant asserts Watson should have been called to testify as a witness to show Myron Ashley was “a murder suspect at large” posing as a “real threat.”⁴⁸ But Defendant contends trial counsel did not pursue Watson as a witness as the testimony would have constituted disparagement of Myron Ashley “as a victim” and “the State would use it as motive for premeditated murder.”⁴⁹ Defendant argued Watson’s testimony could “prove self-defense or duress at the very least.”⁵⁰

Second, Defendant argues his Fifth Amendment Right against Self-Incrimination and Sixth Amendment Right to Counsel were violated when there was use of psychiatric testimony from the court-ordered examination of Defendant at the “penalty phase.”⁵¹ Third, Defendant contends the State’s failed to timely indict him within thirty days of arrest creates a viable postconviction claim that should result in the dismissal of the indictment.⁵²

⁴⁷ D.I. 259.

⁴⁸ *Id.*, p. 3.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*, p. 4.

⁵² *Id.*

Subsequent to filing the initial postconviction motion, Defendant filed an Addendum to the motion, seeking to add an additional claim of that he received multiple punishments for the same offense in violation of Double Jeopardy.⁵³ The Court will consider this additional claim an amendment to the motion.

II. FACTUAL BACKGROUND

This factual recitation is adopted from the Supreme Court’s February 18, 2020 Order denying Defendant’s appeal of this Court’s Order which denied his first postconviction relief motion:

The evidence at trial showed that, on December 24, 2012, Stephenson visited the home of his sister, Ruth Ann Stephenson (“Ruth”); Ruth’s six-year-old son, Myron Ashley, Jr. (“Myron Jr.”); and Myron Jr.’s father, Myron Ashley, Sr. (“Ashley”). Stephenson had previously lived at the home, but had recently moved to his grandparents’ house. After talking with Stephenson for a period of time, Ruth sent Myron Jr. upstairs to take a bath. Ruth and Ashley continued to talk with Stephenson, and then Ruth went upstairs to help Myron Jr. with his bath. While Myron Jr. was in the bathtub, Ruth, who had worked a double shift that day, lay down for a moment and fell asleep. She awoke when she heard two gunshots downstairs. She ran downstairs. Myron Jr. heard a gunshot while he was in the bathtub and ran downstairs after Ruth. Ruth saw Ashley lying on the floor in the living room, in front of the sofa. Stephenson was sitting on the smaller love seat. Ruth yelled at Stephenson “what did you do?” and grabbed at him. He punched her in the face and quickly left the house.

Officers arrested Stephenson several hours later in the basement of his grandparents’ home. They also found a leather jacket with Ashley’s blood on it, along with other clothing items that Stephenson had been wearing at Ruth’s house that night.

Ashley’s death was caused by two gunshot wounds—one of which went through his left arm, and one of which entered and exited

⁵³ D.I. 266, p. 3.

his right arm and then entered and exited his torso. When investigating the scene of the shooting, police officers found a gun on the loveseat and four spent shell casings and a bullet in various areas of the living room. They also found two gunshot holes in the sofa and corresponding holes in the wall behind the sofa and in the floor under the sofa. They were unable to locate those two bullets or any bullet or hole that corresponded to the fourth shell casing. The gun had Stephenson's DNA on it, as well as the DNA of at least two other, unidentified individuals. Ballistics testing revealed that the shell casings had been fired from the gun that was found on the loveseat. Swabs that were taken of Stephenson's hands after his arrest tested positive for gunshot residue.

Stephenson had a long history of mental health issues. After his arrest, the Court of Common Pleas ordered a competency evaluation. Three mental health professionals, including a psychiatrist retained by the defense, opined in five different reports that he was competent to stand trial.

At trial, defense counsel attempted to establish that Stephenson shot Ashley in self-defense. Counsel elicited testimony from various witnesses in an attempt to establish that Stephenson and Ashley had struggled that night and that Stephenson had not gone to the home with any intent to do any harm. But she advised Stephenson against testifying because (i) based on the evidence at trial, counsel believed there was a good chance that the jury might return a lesser-included offense verdict (which did, in fact, occur), and (ii) counsel was concerned about cross-examination concerning inconsistent statements regarding the incident that Stephenson had made to one of the examining mental health professionals. Stephenson also had a history of prior violent felonies, which could have been disclosed to the jury if he testified. Stephenson did not take the stand.⁵⁴

III. APPLICATION OF RULE 61'S PROCEDURAL BARS

In any motion for postconviction relief, this Court must first determine whether a defendant has satisfied the procedural requirements of Superior Court Criminal Rule

⁵⁴ See *Stephenson v. State*, 2020 WL 821418, at *1 (Del. Supr. Feb. 18, 2020).

61 before considering the merit of any asserted claims.⁵⁵ Several procedural bars are applicable to Defendant's motion. First, Superior Court Criminal Rule ("Rule") 61(i)(1) provides a motion for postconviction relief may not be filed more than one year after the judgment of conviction is final.⁵⁶ If a defendant appeals their conviction after a trial, the judgment of conviction is final when the Supreme Court issues its mandate.⁵⁷ And here, the record reflects this Court sentenced Defendant on June 17, 2015,⁵⁸ and Defendant subsequently filed a Notice of Appeal on June 30, 2015.⁵⁹ On June 22, 2016, after considering Defendant's direct appeal, the Supreme Court affirmed the judgment of this Court.⁶⁰ And, the Supreme Court issued its mandate on July 8, 2016.⁶¹ Defendant's Motion is procedurally barred as untimely filed by almost a decade.

Second, Rule 61(i)(2)(i) precludes the filing of successive postconviction motions. The Rule provides:

No second or subsequent motion is permitted under this Rule unless that second or subsequent motion satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule.⁶²

⁵⁵ *Taylor v. State*, 32 A.3d 374, 388 (Del. 2011) (citing *Shelton v. State*, 744 A.2d 465, 474 (Del. 1999)).

⁵⁶ See Super. Ct. Crim. R. 61(i)(1).

⁵⁷ Super. Ct. Crim. R. 61(m)(1)(ii).

⁵⁸ D.I. 87.

⁵⁹ D.I. 86.

⁶⁰ D.I. 117.

⁶¹ D.I. 117.

⁶² See Super. Ct. Crim. R. 61(i)(2)(i); Super. Ct. Crim. R. 61(i)(5).

The present motion before this Court is successive, having been preceded by multiple prior postconviction motions. And “successive motions must be summarily dismissed unless an exception applies.”⁶³

IV. EXCEPTIONS TO THE PROCEDURAL BARS

A defendant can avoid the application of the procedural bars of Rule 61(i)(1) and Rule 61(i)(2)(i) if they can demonstrate this Court lacked jurisdiction or to a claim that satisfies the pleading requirements of Rule 61(d)(2)(i) or (ii).⁶⁴

To satisfy the pleading requirements of Rule 61(d)(2)(i), a defendant must plead with particularity that *new* evidence exists which creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges for which he was convicted.⁶⁵ Defendant has neither addressed nor satisfied this pleading requirement in his January 27, 2026 postconviction motion. In fact, to the extent Defendant refers to any evidence in his motion, the record reflects that evidence was known to him prior to trial.

With respect to Rule 61(i)(2)(ii)’s procedural bar, a defendant must plead with particularity when he brings a claim that a *new* rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the

⁶³ *Stephenson*, 2024 WL 3634264, at *4.

⁶⁴ See Rule 61(i)(2)(i) and Rule 61(i)(5).

⁶⁵ See Rule 61(d)(2)(i). As Commissioner Parker previously held, “Stephenson cannot establish that someone else committed the acts for which he was convicted, because it is undisputed that he was the shooter and that he killed Ashley.” See *Stephenson*, 2024 WL 3634264 at *4.

Delaware Supreme Court, applies to movant's case and renders the conviction invalid.⁶⁶ The record reflects Defendant has neither addressed nor satisfied this pleading requirement. Additionally, a defendant can avoid the application of the procedural bars if he demonstrates this Court lacks jurisdiction. But, again, Defendant neither raised nor addressed a jurisdictional challenge. Therefore, Defendant's sixth *pro se* motion for postconviction relief is subject to summary dismissal.

V. MOTION FOR APPOINTMENT OF POSTCONVICTION COUNSEL

Defendant requests the appointment of postconviction counsel asserting his motion satisfies the requirements of Superior Court Criminal Rule 61(e)(3) – which addresses appointment of counsel in first postconviction motions in guilty plea cases.⁶⁷ It does not. This is not Defendant's first postconviction motion, and he did not enter a guilty plea.

As this is Defendant's sixth postconviction motion, Rule 61 allows this Court to exercise its discretion and appoint counsel only if a defendant has satisfied "the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of [Rule 61]."⁶⁸ As discussed *supra*, he has failed to do so.

⁶⁶ See Rule 61(d)(2)(ii).

⁶⁷ See D.I. 260, p. 1.

⁶⁸ Super. Ct. Crim. R. 61(e)(5).

CONCLUSION

Defendant's claims are procedurally defaulted as untimely pursuant to Rule 61(i)(1), and successive pursuant to Rule 61(i)(2), and he has not satisfied any exception to the application of the procedural rules. Under these circumstances, there is no compelling reason for this Court to address the remaining procedural bars.

THEREFORE, I recommend Defendant's Motion for Postconviction Relief be **SUMMARILY DISMISSED** as procedurally barred pursuant to Rule 61(i)(1) and 61(i)(2). I also recommend that Defendant's Motion for Appointment of Postconviction Counsel be **DENIED**.

IT IS SO RECOMMENDED.

/s/ Martin B. O'Connor

Commissioner Martin B. O'Connor