



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARNELL MARTIN,)
)
 Defendant Below,)
 Appellant,)
) No. 112, 2021
 v.)
)
 STATE OF DELAWARE,)
)
 Plaintiff Below,)
 Appellee.)

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

APPELLANT'S OPENING BRIEF

**THE LAW OFFICE OF
BENJAMIN S. GIFFORD IV**

BENJAMIN S. GIFFORD IV, ID No. 5983
14 Ashley Place
Wilmington, DE 19804
(302) 304-8544

Attorney for Defendant Below - Appellant

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NATURE OF THE PROCEEDINGS

On April 17, 2018, the Grand Jury returned an Indictment against Darnell Martin, charging him with one count each of Drug Dealing, Aggravated Possession, Conspiracy in the Second Degree, and Failure to Use a Turn Signal.¹ Mr. Martin was initially represented by Philip Finestrauss, Esquire, but Patrick Collins, Esquire (hereinafter “Trial Counsel”), substituted his appearance for Mr. Finestrauss on September 1, 2017.²

On October 4, 2017, Trial Counsel filed a Motion to Suppress Evidence on behalf of Mr. Martin.³ Therein, the defense contended that the police impermissibly extended the traffic stop of Mr. Martin’s automobile and lacked probable cause to search the vehicle.

The parties appeared for a hearing in the Superior Court on Mr. Martin’s Motion to Suppress on December 21, 2017.⁴ Upon conclusion of the hearing, the trial court denied Mr. Martin’s motion.⁵

¹ A012-19.

² A001-03.

³ A003; A019-43.

⁴ A004; A044-114.

⁵ A113.

On January 8, 2018, Mr. Martin appeared for Final Case Review.⁶ On that date, the Superior Court engaged in a colloquy with the defendant to ensure that Mr. Martin was knowingly, intelligently, and voluntarily rejecting a plea offer that the State had extended.⁷ During that proceeding, Mr. Martin also waived his right to a jury trial after a colloquy with the trial court, opting instead to proceed to a stipulated bench trial.⁸

That trial took place the following day before The Honorable Paul R. Wallace.⁹ Prior to trial, the State entered a *nolle prosequi* as to the single count of Conspiracy in the Second Degree.¹⁰ After the testimony of one witness, the trial court found Mr. Martin guilty of both Drug Dealing and Aggravated Possession.¹¹ The Superior Court acquitted the defendant of the traffic violation.¹²

After rendering its verdict, the Superior Court moved immediately to sentencing.¹³ The trial judge imposed a sentence as to the count of Drug Dealing

⁶ A005; A115-124.

⁷ A119-20.

⁸ A120-23.

⁹ A005; A125-34.

¹⁰ A126.

¹¹ A132.

¹² A132.

¹³ A132-34.

of twenty-five years of incarceration, suspended after serving two years for eighteen months at supervision Level III.¹⁴ The two-year sentence was a minimum-mandatory period of incarceration.¹⁵ The judge imposed no separate sentence for the Aggravated Possession conviction, as that offense merged with the Drug Dealing for the purpose of sentencing.¹⁶

Trial Counsel filed a timely Notice of Appeal in this Court, ultimately filing an Opening brief on behalf of Mr. Martin on April 9, 2018.¹⁷ The State filed an Answering Brief on May 11, 2018,¹⁸ and Trial Counsel filed a Reply Brief on June 4, 2018.¹⁹ The Court affirmed Appellant's conviction on October 12, 2018.²⁰ The Supreme Court filed its Mandate with the Superior Court on October 30, 2018, which was subsequently docketed the following day.²¹

¹⁴ A134; A135.

¹⁵ A134.

¹⁶ A134.

¹⁷ A139.

¹⁸ A333.

¹⁹ A355.

²⁰ A369; *see also Martin v. State*, 2018 WL 4959037 (Del. Supr. Oct. 12, 2018).

²¹ A006; A372.

Mr. Martin filed a timely *pro se* Motion for Postconviction Relief on December 6, 2018.²² The same day, the defendant filed a Motion for Appointment of Counsel.²³ The Superior Court ordered the appointment of Counsel on January 2, 2019, and postconviction counsel was appointed on March 28, 2019.²⁴

Mr. Martin filed an Amended Motion for Postconviction Relief on December 3, 2019, raising one claim of ineffective assistance of counsel.²⁵ Trial Counsel filed an Affidavit responding to Appellant's postconviction claim on January 22, 2020.²⁶ On April 24, 2020, the State filed a response to Mr. Martin's Amended Motion.²⁷ Mr. Martin filed a Reply in Support of his Amended Motion on August 13, 2020.²⁸

On November 30, 2020, the Superior Court asked for supplemental briefing regarding procedural bars and the effect of this Court's recent decision in *Green v.*

²² A006; A376-79.

²³ A006.

²⁴ A006-07.

²⁵ A011; A380-423.

²⁶ A011A; A424-28.

²⁷ A011A; A429-41.

²⁸ A011A; A442-58.

*State*²⁹ on Mr. Martin’s pending postconviction motion.³⁰ Both the State and Appellant filed letters in response to the trial court’s inquiry on December 31, 2020.³¹

On February 24, 2021, the Superior Court discharged Mr. Martin from probation at the request of Probation and Parole.³² Three weeks later, on March 17, 2021, the trial court issued an Order dismissing Appellant’s Motion for Postconviction Relief on the basis that, because he was no longer on probation, Mr. Martin was no longer “in custody” as required by Superior Court Rule of Criminal Procedure 61 and, consequently, did not have standing to collaterally attack his conviction.³³ The Superior Court issued its decision without asking for additional briefing from the parties as to whether Mr. Martin had standing to pursue postconviction relief, instead raising and deciding the issue *sua sponte*.³⁴

Appellant filed a timely notice of appeal. This is Mr. Martin’s Opening Brief.

²⁹ 238 A.3d 160 (Del. 2020).

³⁰ A011A; A459-60.

³¹ A011B; A461-66.

³² A011B.

³³ A011B; A467-71; *State v. Martin*, 2021 WL 1030348 (Del. Super. Ct. Mar. 17, 2021).

³⁴ *See generally* A011B.

SUMMARY OF ARGUMENT

The Superior Court erred by dismissing Mr. Martin's motion for postconviction relief after holding that Mr. Martin suffered no collateral consequences as a result of the conviction in question. The trial court *sua sponte* reviewed Mr. Martin's prior criminal cases to conclude that Mr. Martin was already a felon prior to his 2019 conviction, and therefore lost no new rights or privileges, despite that Mr. Martin had been issued a pardon by Governor Jack Markell in 2013 that wiped his criminal record clean. Mr. Martin was convicted of the instant felony offense in 2019 as, essentially, a first-time offender, and consequently lost significant legal rights and suffered collateral consequences and burdens as a direct result of the challenged conviction.

STATEMENT OF FACTS

Members of the Wilmington Police Department commenced an investigation of Timothy Adkins after receiving a tip that he was transporting large quantities of marijuana across the country and selling it in Wilmington, Delaware.³⁵ The authorities were also provided an address for Adkins located within the city.³⁶ A confidential source told the police during the early part of 2017 that Adkins was transporting large quantities of marijuana utilizing freight trucks.³⁷

The authorities set up covert surveillance on February 7, 2017 at 712 Dora Moors Lane in New Castle, the residence where Adkins was believed to be staying.³⁸ The authorities observed a box truck arrive, whereupon the driver removed three duffel bags and brought them to the residence.³⁹

Police followed Adkins after he left the residence and proceeded to 228 Cityview Avenue.⁴⁰ They followed the suspect to a parking lot on Route 9 where

³⁵ A036.

³⁶ A036.

³⁷ A036.

³⁸ A037.

³⁹ A037.

⁴⁰ A037.

his tractor-trailer was parked, along with three cabs.⁴¹ The parking lot was located at 314 Baywest Boulevard in New Castle.⁴²

Police observed a Jeep Liberty pull into the driveway of the Dora Moors Lane residence shortly before noon.⁴³ After checking the registration, police learned the Jeep was co-owned by Darnell Martin.⁴⁴ A black male exited the vehicle and entered the residence.⁴⁵ The same man exited at approximately 12:40 p.m. carrying one of the duffel bags.⁴⁶ The driver of the Jeep was accompanied by Adkins as he left the home.⁴⁷ The man placed the duffel bag into the Jeep and left the residence, whereupon police began to follow the vehicle.⁴⁸ The Jeep proceeded to the Baywest parking lot.⁴⁹

⁴¹ A037.

⁴² A037.

⁴³ A038.

⁴⁴ A038.

⁴⁵ A038.

⁴⁶ A038.

⁴⁷ A038.

⁴⁸ A038.

⁴⁹ A038.

One of the trucks at the parking lot was jointly registered to Darnell Martin and K&M Trucking LLC.⁵⁰ The driver of the Jeep exited his vehicle and entered the truck registered to Martin and K&M via the passenger door.⁵¹ A few seconds later, he exited the truck and reentered the Jeep, leaving the parking lot.⁵² Police once again followed.⁵³

The Jeep next drove to 1 Karen Lane, where the driver parked and entered the residence.⁵⁴ At some point the Jeep left that location and proceeded to 11 Marina Lane.⁵⁵ The driver stayed inside the apartment complex located at Marina lane for a short period of time, before returning to his vehicle and leaving the area.⁵⁶ At Llangollen Boulevard and Route 9, Detective Ketler purportedly observed the Jeep fail to use its traffic signal and officers initiated a traffic stop.⁵⁷

⁵⁰ A038.

⁵¹ A038.

⁵² A038.

⁵³ A038.

⁵⁴ A038.

⁵⁵ A040.

⁵⁶ A040.

⁵⁷ A040; A050.

Special Agent Oliver with the FBI approached the vehicle first, and Detective Ketler purportedly approached the vehicle as well.⁵⁸ Detective Ketler detected a “large amount of marijuana emanating from the vehicle.”⁵⁹ The authorities asked the driver, eventually identified as Mr. Martin, whether he had any contraband in the vehicle.⁶⁰ Mr. Martin responded that he had a small amount of marijuana, but that he was a medical marijuana cardholder.⁶¹

Mr. Martin was removed from his vehicle and a drug-sniffing dog was brought to the scene with its handler, Detective Cintron.⁶² The canine positively alerted to the presence of illegal drugs along the passenger side of the vehicle.⁶³ Detective Schupp searched the vehicle and located a black duffel bag on the backseat.⁶⁴ Marijuana was found inside the bag.⁶⁵

⁵⁸ A050.

⁵⁹ A051.

⁶⁰ A052.

⁶¹ A052.

⁶² A040.

⁶³ A040.

⁶⁴ A128.

⁶⁵ A128.

ARGUMENT

CLAIM I. THE SUPERIOR COURT ERRED IN DIMISSING MR. MARTIN'S MOTION FOR POSTCONVICTION RELIEF AFTER MR. MARTIN COMPLETED HIS PROBATIONARY SENTENCE BECAUSE APPELLANT, WHO WAS PARDONED FOR ALL OF HIS PRIOR CONVICTIONS SIX YEARS EARLIER, LOST CONSTITUTIONAL AND CIVIL RIGHTS AND SUFFERED COLLATERAL LEGAL CONSEQUENCES AS A RESULT OF WHAT WAS ESSENTIALLY A FIRST-TIME FELONY CONVICTION.

A. Question Presented

Whether the trial court erred in holding that Mr. Martin suffered no collateral consequences because of his conviction by relying upon prior felony convictions that had been wiped away by the issuance of a gubernatorial pardon years prior. This issue was preserved via the filing of a Motion for Postconviction Relief.⁶⁶

B. Standard and Scope of Review

This Court reviews the Superior Court's decision on a motion for postconviction relief for abuse of discretion.⁶⁷ A *de novo* standard is applied to legal and constitutional questions.⁶⁸

⁶⁶ A011; A380-423.

⁶⁷ *Ploof v. State*, 75 A.3d 840, 851 (Del. 2013).

⁶⁸ *Id.*

C. Merits of Argument

The Superior Court erred in dismissing Mr. Martin's Motion for Postconviction Relief, as Appellant suffered collateral legal disabilities and burdens as a result of his conviction, thereby exempting him from the "in custody" requirement of Superior Court Rule of Criminal Procedure 61 based on the precedent of this Court. Prior to his conviction in this case in January 2018, Mr. Martin had received a pardon from the Governor, extinguishing all of his prior misdemeanor and felony convictions from his criminal record. Consequently, his conviction in the instant matter rendered him a felon, causing him to lose various constitutional rights and suffer other collateral consequences.

Superior Court Criminal Rule 61(a)(1) sets forth who is eligible to pursue postconviction relief: "a person in custody under a sentence" of the Superior Court who seeks to set aside his judgment of conviction on any ground that is factually and legally adequate to form the basis of a collateral attack upon that conviction.⁶⁹ This Court has held that a person loses standing to seek postconviction relief when he is "not in custody or subject to future custody for the underlying offense or challenged sentence."⁷⁰ So long as a defendant is at least serving a probationary

⁶⁹ *Super. Ct. Crim. R.* 61(a)(1).

⁷⁰ *Ruiz v. State*, 2008 WL 1961187 at *2 (Del. Supr. May 7, 2008).

sentence for the conviction he seeks to collaterally attack, then he is “in custody” as required by Rule 61.⁷¹ Once a defendant is discharged from probation, however, he generally “no longer [has] standing to pursue postconviction relief under Rule 61, as he [is] no longer in custody or subject to future custody.”⁷²

The custodial status is dispositive as to whether a defendant can seek postconviction relief in all but one scenario: the completion of a sentence renders a case moot *unless*, as a consequence of the conviction or resulting sentence, “the defendant suffers legal disabilities or burdens, in which event the defendant is considered to have a sufficient stake in the conviction or sentence to survive the satisfaction of the sentence and to permit him to obtain a review or institute a challenge.”⁷³ To fall within the ambit of the exception, this Court has held that a defendant must first specifically demonstrate “a right lost or disability or burden imposed, by reason of the instant conviction.”⁷⁴

In *Gural v. State*, the Court ruled that the defendant had failed to make such a showing.⁷⁵ Gural was convicted of embezzlement and sentenced to three years

⁷¹ See, e.g., *Epperson v. State*, 2003 WL 21692751 at *1 (Del. Supr. Jul. 18, 2003).

⁷² *Crisco v. State*, 2015 WL 257867 at *1 (Del. Supr. Jan. 20, 2015).

⁷³ *Gural v. State*, 251 A.2d 344, 344-45 (Del. 1969).

⁷⁴ *Id.* at 345.

⁷⁵ *Id.*

of incarceration.⁷⁶ While incarcerated, Gural sought postconviction relief, which was ultimately denied in the trial court.⁷⁷ The defendant appealed that denial to this Court, filing his appeal on February 5, 1968.⁷⁸ Gural completed his sentence on June 22, 1968 while the appeal was still pending.⁷⁹ The State filed a motion to dismiss the appeal on the grounds that the defendant had lost standing to seek postconviction relief, which was heard by this Court six months after Gural had satisfied the sentence imposed as a result of the challenged conviction.⁸⁰

Gural opposed the motion to dismiss, arguing that, because of the challenged conviction, “he cannot engage in certain business activities, he is deprived of certain civil rights, and he is subjected to additional penalties for subsequent criminal violations and to ‘other collateral consequences stemming from his conviction.’”⁸¹ This Court rejected Gural’s argument, however, in light of his “extensive prior criminal record.”⁸² The Court observed that the defendant had

⁷⁶ *Id.* at 344.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 345.

⁸² *Id.*

been convicted seven times previously of crimes similar to embezzlement and had previously served several terms of incarceration.⁸³ The rights Gural claimed to have lost and the collateral consequences he purported to suffer as a result of the challenged conviction had “already been lost or imposed by reason of his earlier convictions.”⁸⁴ Accordingly, the Court determined that Gural had not suffered collateral legal disabilities or burdens as a result of the conviction in question sufficient to provide the defendant a sufficient stake in the conviction to survive the satisfaction of his sentence which would permit him to obtain postconviction review, and Gural’s appeal was consequently dismissed.⁸⁵

A similar result occurred in *State v. Jackson* in the Superior Court in 2016.⁸⁶ Jackson filed a motion for postconviction relief and, during the pendency of that motion, satisfied the sentence that resulted from the conviction at issue.⁸⁷ The Court ruled that Jackson lacked standing to obtain postconviction relief because he was no longer in custody, pointing to the defendant’s four prior felony convictions

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ 2016 WL 7076990 (Del. Super. Ct. Dec. 5, 2016).

⁸⁷ *Id.* at *1.

as evidence that he suffered no collateral legal disabilities or burdens as a result of the conviction in question.⁸⁸

Here, the trial court quickly dismissed the notion that Appellant fell within the exception to the “in custody” requirement of Rule 61, holding that “given his lengthy criminal history—that already included numerous prior felony drug convictions—it is clear that Mr. Martin suffers no collateral consequences as a result of the particular conviction he challenges through his pending motion.”⁸⁹ The Superior Court cited⁹⁰ to the sentencing orders in four prior cases to support its contention: (1) a 1992 conviction for cocaine delivery and a related charge in case number 91006298DI;⁹¹ (2) a 1993 conviction for possession with intent to deliver cocaine in case number 93003115DI;⁹² (3) a 1994 conviction for simple possession of cocaine in case number 9402004121;⁹³ and (4) a conviction for trafficking in cocaine in case number 9912018840.⁹⁴

⁸⁸ *Id.*

⁸⁹ A469; *Martin*, 2021 WL 1030348 at *1.

⁹⁰ A469; *Martin*, 2021 WL 1030348 at *1 n.10.

⁹¹ The docket for case number 91006298DI is attached hereto as Exhibit B.

⁹² The docket for case number 93003115DI is attached hereto as Exhibit C.

⁹³ The docket for case number 9402004121 is attached hereto as Exhibit D.

⁹⁴ The docket for case number 9912018840 is attached hereto as Exhibit E.

Unlike in *Gural*, the State did not seek dismissal based on Mr. Martin’s custodial status. And, despite that Appellant’s most recent felony conviction was more than eighteen years before his conviction in the instant case—thus giving rise to an argument that Mr. Martin *would* suffer collateral legal disabilities or burdens from a newly-obtained felony conviction—the Court did not seek the parties’ position before issuing its Order dismissing Mr. Martin’s case.⁹⁵ Instead, the Court *sua sponte* reviewed Mr. Martin’s decades-old closed cases to determine Appellant had a felony record and based its ruling on that independent review.

Unfortunately, when examining Mr. Martin’s prior cases to review the defendant’s historical sentence orders, the Court did not notice that the Delaware Board of Pardons had sent a notice to the Superior Court in 2012.⁹⁶

Governor Jack Markell issued a pardon to Mr. Martin on June 14, 2013.⁹⁷ Therein, the Governor pardoned Appellant for every one of his prior criminal convictions, ultimately revoking Mr. Martin’s felon status.⁹⁸ With a clean criminal

⁹⁵ *See generally* A011B. Nearly four months after the pleading process had concluded, the Superior Court had previously requested supplemental briefing from both parties as to whether the “prior adjudication” procedural bar found within Rule 61(i)(4) served to bar Mr. Martin’s postconviction claim. A011A; A459-60.

⁹⁶ *See* Exhibit E at D.I. 57.

⁹⁷ A copy of the June 14, 2013 pardon, issued by Governor Markell, is attached hereto as Exhibit F.

⁹⁸ *See* Exhibit F.

record, Mr. Martin appeared in the Superior Court for trial in the instant case in 2018 as, essentially, a first-time offender.

As a direct result of his conviction in this case, Mr. Martin is once again a felon. Accordingly, he has lost his right to serve on a jury.⁹⁹ He cannot own or possess a firearm or ammunition.¹⁰⁰ Mr. Martin's ability to obtain employment will be affected, as he could be disqualified by public employers due to his felony conviction.¹⁰¹ His likelihood of gaining employment for any government job position is severely limited, as some federal and state statutes require or expressly permit the consideration of an applicant's criminal history.¹⁰² For some professions, Mr. Martin could be outright excluded due to his felony conviction.¹⁰³ He is ineligible to receive federal student loans for a period of time.¹⁰⁴ Additionally, Mr. Martin will once again have to live with the stigma of being a convicted felon eighteen years after his last conviction and nearly ten years after receiving his pardon from the Governor. Appellant was not suffering from these

⁹⁹ See 10 *Del. C.* § 4509(b)(6).

¹⁰⁰ See 11 *Del. C.* § 1448(a)(1).

¹⁰¹ See 19 *Del. C.* § 711(g)(3).

¹⁰² See 19 *Del. C.* § 711(g)(4).

¹⁰³ See, e.g., 18 *Del. C.* § 1712(a)(6) (allowing the Insurance Commissioner to refuse to issue a professional insurance license to a convicted felon).

¹⁰⁴ See 20 *U.S.C.* § 1091(r).

collateral consequences before 2018, and each right lost and burden imposed results directly from his conviction in this case.

The United States Supreme Court has held that where a conviction directly leads to a petitioner’s inability to “engage in certain businesses; . . . [or] serve as a juror,” then he has a “substantial stake in the judgment of conviction which survives the satisfaction of the sentence imposed on him.”¹⁰⁵ The *Gural* Court mirrored that language in its decision, and only found the defendant not to have a substantial stake in the conviction because of his prior criminal record.¹⁰⁶ Indeed, the *Gural* Court envisioned a scenario in which an appellant’s postconviction motion could potentially survive the satisfaction of his sentence: a defendant whose “conviction blemished an otherwise clean record.”¹⁰⁷

Mr. Martin is the *Gural* Court’s hypothetical defendant. Prior to his conviction in 2019, Mr. Martin’s criminal record had been wiped clean vis-à-vis Governor Markell’s issuance of a pardon six years earlier. Due to the conviction at issue, Mr. Martin has lost fundamental and identifiable rights and liberties that he may never again possess absent a second pardon. Appellant falls within the exception to the “in custody” requirement of Rule 61 as defined in *Gural*, and the

¹⁰⁵ *Carafas v. LaVallee*, 391 U.S. 234, 237 (1968).

¹⁰⁶ *See Gural*, 251 A.2d 344 at *345.

¹⁰⁷ *Id.*

trial court abused its discretion in holding otherwise. Consequently, this Court must reverse the Superior Court's Order dismissing Mr. Martin's motion for postconviction relief for lack of standing and remand the matter for a decision on the merits.

CONCLUSION

For the reasons stated herein, Mr. Martin respectfully requests that this Honorable Court reverse the judgment of the Superior Court.

**THE LAW OFFICE OF
BENJAMIN S. GIFFORD IV**

/s/ Benjamin S. Gifford IV

Benjamin S. Gifford IV, ID No. 5983

14 Ashley Place

Wilmington, DE 19804

(302) 304-8544

Attorney for Defendant Below - Appellant

Dated: June 4, 2021