

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
)	
v.)	Cr. ID No. 9711014716
)	
WILLIAM T. JOHNSON, JR.,)	
)	
Defendant.)	

Submitted: June 7, 2016
Decided: September 8, 2016

**COMMISSIONER'S REPORT AND RECOMMENDATION THAT
DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE SUMMARILY DISMISSED.**

Maria T. Knoll, Esquire, Deputy Attorney General, Department of Justice, Wilmington,
Delaware, Attorney for the State.

William T. Johnson, Jr., James T. Vaughn Correctional Center, Smyrna, Delaware,
pro se.

PARKER, Commissioner

This 8th day of September 2016, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND AND PROCEDURAL HISTORY

1. In October 1998, Defendant William T. Johnson, Jr. was tried for having committed three armed robberies. The State sought to prove that Johnson was the driver of the getaway car. The Delaware Superior Court jury convicted Johnson of one count of robbery and related offenses. Specifically, Johnson was convicted of one count of First Degree Robbery, one count of Second Degree Conspiracy and one count of Possession of a Firearm During the Commission of a Felony ("PFDCF").

2. The Superior Court granted the State's motion to declare Johnson a habitual offender and sentenced him under 11 *Del. C.* § 4214(a). In December 1998, Defendant was sentenced to an aggregate term of twenty-three years imprisonment and one year of probation.

3. On direct appeal, the Delaware Supreme Court affirmed Johnson's convictions and sentence.¹

4. In December 1999, Johnson filed a motion to vacate sentence pursuant to Superior Court Criminal Rule 35(a). The Superior Court denied the motion.² The Delaware Supreme court affirmed the Superior Court's decision denying Johnson's relief under Rule 35(a).³

5. In August 2000, Johnson filed a federal habeas petition in the United States District Court, in the District of Delaware. The Delaware District Court dismissed the

¹ *Johnson v. State*, 1999 WL 1098173 (Del.).

² Superior Court Docket Nos. 49, 58.

³ *Johnson v. State*, 2000 WL 1177624 (Del.).

petition without prejudice because Johnson failed to exhaust his available state remedies with respect to his ineffective assistance of counsel claims.⁴

6. In April 2001, Johnson filed a Rule 61 motion for postconviction relief asserting numerous grounds for relief. In that motion, Johnson raised ineffective assistance of counsel claims, alleged discovery violations, and other alleged trial court errors. Included amongst the claims raised was that the State violated the discovery rules by failing to provide a police officer's notes to defense counsel, that Johnson's right to confront witnesses was violated as the result of the failure to provide certain discovery, and that counsel was ineffective for failing to object to the discovery violations.⁵

7. In January 2002, the Delaware Superior Court concluded that Johnson's Rule 61 claims were either procedurally barred or meritless. The Superior Court held that defense counsel was not ineffective and that there were no discovery violations committed by the State.⁶ Johnson appealed, and the Delaware Supreme Court affirmed the decision of the Delaware Superior Court.⁷

8. Johnson filed a second habeas petition to the Delaware District Court which was dismissed as untimely.⁸ Johnson appealed and the Third Circuit Court of Appeals concluded that equitable tolling should apply as to the exhausted claims raised by Johnson in his first habeas petition.⁹ Accordingly, the Third Circuit remanded the case

⁴ *Johnson v. Williams*, 2001 WL 34368397 (D.Del.).

⁵ See, Superior Court Docket No. 63; See also, *State v. Johnson*, 2002 WL 130537 (Del.Super.).

⁶ *State v. Johnson*, 2002 WL 130537 (Del.Super.).

⁷ *Johnson v. State*, 2002 WL 1836684 (Del.).

⁸ *Johnson v. Carroll*, 2004 WL 1043200 (D.Del.).

⁹ *Johnson v. Carroll*, Civil Action No. 04-2701 (3d Cir. May 27, 2005).

for the District Court of Delaware to consider the exhausted claims raised by Johnson in his first habeas petition.¹⁰

9. Following a consideration of the claims raised by Johnson in his first habeas petition, the Delaware District Court found the claims to be without merit and denied Johnson's request for federal habeas relief.¹¹ The Delaware District Court considered, *inter alia*, Johnson's discovery violation claims. Johnson contended that the State violated Delaware's discovery rules by waiting to disclose the arresting officer's handwritten notes until its rebuttal case. The Delaware District Court held that because the Delaware Supreme Court already considered this claim and already held that there was no violation of Delaware's discovery rules, this claim was not cognizable on federal habeas review.¹²

10. The Delaware District Court also considered this discovery claim in the context of a *Brady* violation. The Delaware District Court held that although the *Brady* violation claim was presented to the Delaware Supreme Court on appeal from the denial of his Rule 61 post conviction motion, the Delaware state courts never actually discussed this discovery claim in terms of a *Brady* violation. As a result, the Delaware District Court reviewed the *Brady* violation claim *de novo* and adjudicated the claim on its merits in Johnson's federal habeas petition.¹³

11. As to Johnson's *Brady* violation claim, the Delaware District Court held:

In this case, the record demonstrates that Petitioner was provided with a summary of the police report, including

¹⁰ *Johnson v. Carroll*, Civil Action No. 04-2701 (3d Cir. May 27, 2005); *Johnson v. Carroll*, 2006 WL 1431225, *1 (D.Del.).

¹¹ *Johnson v. Carroll*, 2006 WL 1431225 (D.Del.).

¹² *Johnson v. Carroll*, 2006 WL 1431225, *5 (D.Del.).

¹³ *Johnson v. Carroll*, 2006 WL 1431225, *5-6 (D.Del.).

Petitioner's statements, prior to trial. Indeed, defense counsel moved to suppress these statements pretrial demonstrating that Petitioner was provided with discovery regarding these statements. At trial, Petitioner denied that he made the statements and attacked Detective Fiscella's credibility. In rebuttal, the prosecution introduced Detective Fiscella's handwritten notes. Accordingly, the evidence was neither exculpatory nor of impeachment value to Petitioner, and therefore, the Court concludes that Petitioner cannot establish a *Brady* violation entitling him to federal habeas relief.¹⁴

12. The Delaware District Court dismissed the claims raised by Johnson and denied his request for federal habeas relief.¹⁵

13. In March 2009, Johnson filed a motion for correction of sentence alleging that the State's habitual offender motion was deficient. In April 2009, Johnson filed a Rule 61 motion for postconviction relief alleging that he was entitled to a new trial on the basis of the Delaware Supreme Court's opinion in *Allen v. State*.¹⁶ By Order dated July 27, 2009, the Superior Court denied both of these motions as without merit.¹⁷ Johnson appealed, and the Delaware Supreme Court affirmed the decision of the Delaware Superior Court.¹⁸

14. On March 2, 2016, Johnson filed the subject Rule 61 motion.

DEFENDANT'S RULE 61 MOTION

15. In the subject Rule 61 motion, filed on March 2, 2016, Defendant claims that the State committed various *Brady* violations and other alleged discovery violations. Defendant also contends that his counsel was ineffective for not objecting to the State's discovery violations.

¹⁴ *Johnson v. Carroll*, 2006 WL 1431225, *6 (D.Del.).

¹⁵ *Johnson v. Carroll*, 2006 WL 1431225 (D.Del.).

¹⁶ *Allen v. State*, 970 A.2d 203 (Del. 2009).

¹⁷ *State v. Johnson*, 2009 WL 2386153 (Del.Super.).

¹⁸ *Johnson v. State*, 2010 WL 1627299 (Del.).

16. On March 2, 2016, Johnson filed a motion for the appointment of counsel to assist him in the filing of this third Rule 61 motion.¹⁹ Johnson also filed a motion for an evidentiary hearing.²⁰ Defendant's request for the appointment of counsel and motion for an evidentiary hearing were denied by the court on May 6, 2016.²¹

17. The subject Rule 61 motion was thereafter assigned to the undersigned commissioner.

18. In second or subsequent postconviction motions, the motion shall be summarily dismissed unless the defendant establishes: 1) that new evidence exists that creates a strong inference that he is actually innocent of the charge for which he was convicted, or 2) the existence of a new rule of constitutional law made retroactive to cases on collateral review rendered his convictions invalid.²² If it plainly appears from the motion for postconviction relief that the movant is not entitled to relief, the Court may enter an order for its summary dismissal and cause the movant to be notified.²³

19. Defendant's subject motion, his third Rule 61 motion, should be summarily dismissed. Defendant has not pled with particularity that any new evidence exists that creates a strong inference that he is actually innocent of the charge for which he was convicted or that there is a new rule of law that would render his conviction invalid.

20. Defendant does not raise anything new or recently discovered. All of Defendant's claims stem from facts known to him at the time of his trial in 1998. Defendant does not raise any new evidence, let alone new evidence that would create a strong inference that he is actually innocent.

¹⁹ Superior Court Docket No. 90.

²⁰ Superior Court Docket No. 89.

²¹ Superior Court Docket No. 96.

²² Super.Ct.Crim.R. 61(d)(2)& (5); and Rule 61(i) (effective June 4, 2014).

²³ Super.Ct.Crim.R. 61(d)(5).

21. Moreover, Defendant does not cite to any new rule of constitutional law that would be applicable to his case. Defendant cites to *Starling v. State*²⁴, and *Wright v. State*,²⁵ in support of his claims that the State committed discovery violations in this case. Unlike this case, in those cases, the Delaware Supreme Court held that under the facts of those cases the State had, in fact, committed discovery violations. In this case, however, both the Delaware Supreme Court and the Delaware District Court have previously considered Defendant's claims of discovery violations, and both have held that no discovery violations were committed. The cases cited by Defendant, *Starling* and *Wright*, did not create any new rule of constitutional law. Those cases merely applied the existing law to the facts of each respective case.

22. Defendant has failed to meet the pleading requirements allowing him to proceed with his Rule 61 motion. Defendant has not raised any new evidence nor has he cited to any new rule of constitutional law that would be applicable to this case. In accordance with the mandates of Rule 61, Defendant's motion should be summarily dismissed.²⁶

23. Moreover, Defendant's motion also falls short of other procedural requirements that must be met. If a procedural bar exists, then the claim is barred and the court should not consider the merits of the claim.²⁷

24. Rule 61 (i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;²⁸ (2) any basis for relief must be asserted in the first timely filed motion for postconviction relief absent exceptional circumstances (ie. discovery of new evidence or new rule of constitutional law) warranting a subsequent

²⁴ *Starling v. State*, 130 A.3d 316 (Del. 2016).

²⁵ *Wright v. State*, 91 A.3d 972 (Del. 2014).

²⁶ Super.Ct.Crim.R. 61(d)(2) & 5; and Rule 61(i).

²⁷ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

²⁸ Super.Ct.Crim.R. 61(i)(1).

motion being filed; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules unless the movant shows prejudice to his rights and cause for relief; and (4) any basis for relief must not have been formally adjudicated in any proceeding. The bars to relief however do not apply to a claim that the court lacked jurisdiction or to a claim that new evidence exists that movant is actually innocent or that there is a new law, made retroactive, that would render the conviction invalid.²⁹

25. In the subject action, Defendant's motion is time-barred. The final order of conviction was in 1999³⁰, and this motion was filed in February 2016, over 16 years later.³¹ This motion was filed well outside the applicable one year limit. Defendant's claims, at this late date, are time-barred.

26. As previously discussed, Rule 61(i)(2) further precludes this court's consideration of Defendant's motion since Defendant has not satisfied the pleading requirements for proceeding with this motion. Defendant has not established that new evidence exists creating a strong inference of Defendant's actual innocence or the existence of a new rule of constitutional law made retroactive to this case that would render his convictions invalid.

27. Rule 61(i)(4) also precludes Defendant's claims raised herein since most of the claims were already raised and adjudicated in some fashion on Defendant's direct appeal, in a previously filed Rule 61 motion, and/or in Defendant's federal habeas corpus petition. Both the Delaware Supreme Court and the Delaware District Court have already considered Defendant's claims of discovery violations, and both have held that

²⁹ Super.Ct.Crim.R. 61 (effective June 4, 2014).

³⁰ Super.Ct.Crim.R. 61(m)(2).

³¹ Super.Ct.Crim.R. 61(i)(1).

Defendant's claims were without merit. Those claims previously raised are now procedurally barred as previously adjudicated.

28. Rule 61(i)(3) also prevents this court from considering any claims raised by Defendant not previously raised. Defendant's trial was held in 1998. It is now over 17 years later. Defendant was aware of, had time to, and the opportunity to raise all of the claims presented herein in a timely filed motion. All of Defendant's claims stem from facts known to Defendant at the time his trial in 1998. Defendant does not raise anything new or recently discovered.

29. Defendant has not established any prejudice to his rights and/or cause for relief. Defendant had time and opportunity to raise any issue raised herein on direct appeal and/or in a timely filed postconviction motion. There is no just reason for Defendant's 17 year delay in doing so. Having been provided with a full and fair opportunity to present any issue desired to be raised in a timely filed motion, any attempt at this late juncture to raise, re-raise or re-couch a claim is procedurally barred.

30. Defendant has failed to meet the pleading requirements for proceeding with the subject motion and, therefore, the motion should be summarily dismissed. Defendant's motion is also time barred and otherwise procedurally barred.

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be summarily dismissed.

IT IS SO RECOMMENDED.

Commissioner Lynne M. Parker

oc: Prothonotary
Kevin J. O'Connell, Esquire