

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DEMETRIUS DEMBY,)
)
Defendant below,)
)
v.)
)
STATE OF DELAWARE,)
)
Plaintiff below.)
)
)
)

Cr. A. No. 0604011029

Date Decided: February 28, 2017

On Defendant Below, Demetrius Demby’s Motion for
Post Conviction Relief. **DENIED.**

ORDER

Daniel B. McBride, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State of Delaware.

Defendant, Demetrius Demby, Pro Se.

SCOTT, J.

Background

Defendant, Demetrius Demby (hereinafter “Defendant”) was pulled over by two Wilmington Police Officers on April 15, 2006. The officers ran Defendant’s name in DELJIS and determined that Defendant had outstanding capiases and was driving with a suspended license. A search of the vehicle incident to arrest resulted in discovery of 21 bags of crack cocaine. Defendant admitted that the crack cocaine belonged to him. Subsequently, a jury convicted Defendant of Possession with the Intent to Deliver a Narcotic Schedule I Controlled Substance, Maintaining a Vehicle for Keeping Controlled Substances, and Driving without a Seatbelt. The State filed a Petition to Declare the Defendant a Habitual Offender. This Court granted the State’s Petition and sentenced Defendant to life in prison pursuant to 11 Del. C. § 4214(b). The Delaware Supreme Court issued an opinion affirming the Superior Court judgment.

Defendant filed his first motion for post conviction relief on March 11, 2009. A Commissioner issued a report recommending the motion be denied, and the Superior Court adopted this recommendation on October 29, 2009. The Delaware Supreme Court denied Defendant’s first motion for post conviction relief on December 21, 2010. Before the Court is Defendant’s second motion for post conviction relief which he filed on August 24, 2015. The State filed the requisite response on August 30, 2016.

Discussion

The Court must address Defendant's motion in regard to Rule 61(i) procedural requirements before assessing the merits of his motion.¹ Rule 61(i)(2)² bars successive postconviction motions unless the Defendant's motion satisfies the requirements of Rule 61(d)(2)(i) or (d)(2)(ii).³ Rule 61(d)(2) provides that a second or subsequent motion under Rule 61 shall be summarily dismissed unless the Defendant:

- (1) pleads with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in face of the acts underlying the charges of which he was convicted; or
- (2) 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.⁴

Defendant has not plead with particularity that new evidence exists that creates a strong inference of innocence. Defendant must show that *new evidence* exists that creates a strong inference as to his innocence. However, Defendant's Second Motion for Post Conviction Relief is based on evidence available during trial, and focuses on claims of ineffective assistance of counsel. In regard to Rule 61(d)(2)(ii), Defendant has not plead with particularity that a new rule of

¹ Super. Ct. Crim. R. 61(i)(1).

² Super. Ct. Crim. R. 61(i)(2).

³ Super. Ct. Crim. R. 61(i)(2)(i).

⁴ Super. Ct. Crim R. 61(d)(2).

constitutional law renders his conviction invalid. The Court rejects Defendant's claims against the State. What the State has done in this case has no impact on the Court's determination regarding Defendant's subsequent Motion for Postconviction Relief because it is procedurally barred. Thus, Defendant's Motion for Postconviction Relief, Motion for Leave/Permission to Amend Demby's Affidavit, Motion for Default Judgment, Motion to Waiver Any Response by the Attorney General's Office, and Motion to Show Cause and to Amend are **DENIED.**

IT IS SO ORDERED.

/s/ Calvin L. Scott

The Honorable Calvin L. Scott, Jr.