

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE                    )  
  )  
          v.                                    )     ID No. 0206019341  
  )  
CURTIS COLLINS                        )  
  )  
          Defendant.                     )

Submitted: October 22, 2013  
Decided: January 23, 2014

**Upon Defendant’s Second Motion for Postconviction Relief – DENIED**

**ORDER**

R. David Favata, Esquire, Department of Justice, 820 N. French Street,  
Wilmington, DE 19801.

Curtis M. Collins, James T. Vaughn Correctional Center, 1181 Paddock Road,  
Smyrna, Delaware 19977. *Pro Se* Defendant.

**CARPENTER, J.**

On this 23<sup>rd</sup> day of January 2014, upon consideration of Defendant's Second Motion for Postconviction Relief, it appears to the Court that:

1. Defendant filed this *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61") on October 22, 2013. For the reasons set forth below, Defendant's Second Motion for Postconviction Relief is hereby **DENIED**.

2. Commencing July 8, 2003, a two-day jury trial was held in which the Defendant was found guilty of two counts of First Degree Robbery, two counts of Possession of a Deadly Weapon During the Commission of a Felony, Possession of a Deadly Weapon by Person Prohibited, Assault Second Degree, and Terroristic Threatening. Defendant was sentenced as a habitual offender on September 26, 2003 to a minimum of 28 years of incarceration, to be followed by periods of decreasing supervised probation. Upon appeal, Defendant's convictions were affirmed by the Delaware Supreme Court and the mandate was issued on March 16, 2004.

3. On February 2, 2006, Defendant filed his first motion for postconviction relief arguing two grounds: ineffective assistance of counsel and prosecutorial and/or judicial misconduct. The Court denied the Motion on April 28, 2006, finding that Defendant's prior counsel acted reasonably in deciding not

to file a motion to suppress, which would likely be denied, and choosing not to visit the crime scene. Further, the Court found that the State had no obligation to offer a plea to Defendant, there was adequate notice of the trial date, and there was no indication that the trial was conducted unfairly or in a manner prejudicial to Defendant. For those reasons, the motion was denied.

4. On October 22, 2013, Defendant filed the present motion, arguing that the following constitute grounds for relief: (1) judicial abuse of discretion in denying Defendant counsel in his first motion for postconviction relief; (2) judicial abuse of discretion in not conducting a conflict hearing *sua sponte* and/or assigning a conflict attorney prior to trial; (3) ineffective assistance of counsel; and (4) prosecutorial misconduct during trial.

#### ***Procedurally-Barred Claims***

5. Prior to addressing the merits of any postconviction claim, the Court must determine whether the procedural requirements of Rule 61 have been met.<sup>1</sup> Specifically, any ground for relief raised by the Defendant that was not raised at trial or on direct appeal is procedurally barred unless the Defendant shows both cause for relief and prejudice from a violation of his rights.<sup>2</sup> Additionally, any grounds for relief previously adjudicated, including those adjudicated in “the

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<sup>1</sup> See e.g., *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) (citing *Harris v. Reed*, 489 U.S. 255, 265 (1989)).

<sup>2</sup> See Super. Ct. Crim. R. 61(i)(3).

proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding,” are barred unless “reconsideration of the claim is warranted in the interest of justice.”<sup>3</sup>

6. The Court finds that Defendant’s claims of judicial abuse of discretion at the trial level and prosecutorial misconduct at trial, enumerated as (2) and (4) above, are procedurally barred. First, in regard to judicial abuse of discretion, Defendant argues that when he filed his Motion to Disqualify Counsel on March 28, 2003, the Court should have conducted a conflict hearing and/or appointed conflict counsel *sua sponte*. Instead, after receiving the motion, the Court wrote to Defendant’s counsel explaining that it was unable to ascertain the precise meaning of Defendant’s vague motion:

Dear Mr. Bernstein:

I enclose a Motion for Appointment of Counsel received from your client, Mr. Collins.

A review of the file indicates that there was a mistrial declared on March 13, 2003. I am unable to ascertain from Mr. Collins’ motion whether he is seeking a substitution of counsel or whether he believes he is no longer represented by counsel. Will you please discuss the attached with your client at your earliest opportunity.

Based on the information contained in the motion before the Court, it is DENIED.

IT IS SO ORDERED.<sup>4</sup>

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<sup>3</sup> Super. Ct. Crim. R. 61(i)(4).

<sup>4</sup> *State v. Collins*, I.D. No. 0206019341 (Del. Super. Apr. 7, 2003) (ORDER).

The Court, in addition to sending a copy of the above letter to Defendant, also penned a similar letter directly to Defendant, again denying the unclear motion and explaining that the Court needed more to replace Mr. Bernstein as Defendant's counsel.<sup>5</sup> After the denial, Mr. Bernstein took up Defendant's representation again and he represented Defendant in a full trial on the merits. Defendant failed to reassert any issues he might have had with Mr. Bernstein's continued representation and his acquiescence to such is a waiver of any conflict-of-interest claim. Therefore, the Court did not abuse its discretion in declining to conduct a conflict hearing *sua sponte* nor appoint conflict counsel in response to Defendant's unclear and later-waived motion.

Second, Defendant's fourth claim of prosecutorial misconduct is also barred. Defendant had ample opportunity to raise prosecutorial misconduct in his direct appeal and prior motion for postconviction relief. Although Defendant did argue prosecutorial misconduct arising from other alleged wrongdoings during trial, he failed to raise the argument asserted here: that Defendant was unduly prejudiced by the prosecutor's statements that the weapon belonged to Defendant. Defendant's failure to raise such claim in his prior post-conviction proceedings

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<sup>5</sup> *State v. Collins*, I.D. No. 0206019341 (Del. Super. Apr. 21, 2003) (ORDER).

deems such waived. Further, the Court finds that consideration of this claim, despite the procedural bar, is not warranted in the interest of justice.

### *Ineffective Assistance of Counsel*

9. Defendant's claim of ineffective assistance of counsel also fails. Unlike the newly-asserted claims above, Defendant previously argued two grounds for ineffective assistance in his first motion for postconviction relief: (1) counsel's decision not to file a motion to suppress and (2) counsel's decision not to visit the crime scene. In its denial of Defendant's motion the Court found: (1) "Mr. Bernstein's decision to not file a motion to suppress was based upon a reasonable analysis of evidentiary law[ ]"<sup>6</sup> and (2) "Mr. Collins's conclusory statements fail to reflect why a personal visit to the [crime scene] would be beneficial to his representation, nor has he shown how he was unfairly prejudiced by counsel's decision or how it would have any effect on the outcome of the trial."<sup>7</sup>

Here, Defendant presents three arguments for ineffective assistance of counsel: (1) failing to conduct a pre-trial investigation; (2) failing to aggressively take on and assume the posture of a defense advocate; and (3) undermining Defendant's trust and confidence in counsel through epithets of Defendant's

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<sup>6</sup> *State v. Collins*, I.D. No. 0206019341, at 4 (Del. Super. Apr. 28, 2006) (ORDER).

<sup>7</sup> *Id.* at 5.

chances at trial. For the following reasons, the Court finds these arguments unpersuasive.

10. Ineffective assistance of counsel claims are governed by the two-part test established in *Strickland v. Washington*.<sup>8</sup> Specifically, a defendant's claim of ineffective assistance of counsel is subject to a strong presumption that the representation was professionally reasonable.<sup>9</sup> In order to overcome this presumption, the defendant must establish that: (1) his trial counsel's efforts fell below a reasonable objective standard and (2) there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's unprofessional errors.<sup>10</sup> "Mere allegations of ineffectiveness will not suffice."<sup>11</sup> Instead, "a defendant must make, and substantiate, specific allegations of actual prejudice."<sup>12</sup> Further, the Court must evaluate defense counsel's conduct at the time of the trial in order to maintain the proper perspective and "eliminate 'the distorting effects of hindsight[.]'"<sup>13</sup>

11. As this is Defendant's second Rule 61 Motion, any previously raised and denied ineffective assistance claims are barred. As discussed above, this Court

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<sup>8</sup> 466 U.S. 668, 687 (1984). *See also Winn v. State*, 1998 WL 15002 (Del. Jan. 7, 1998).

<sup>9</sup> *See Winn*, 1998 WL 15002, at \*2.

<sup>10</sup> *See Strickland v. Washington*, 466 U.S. 668, 689 (1984).

<sup>11</sup> *Gattis v. State*, 697 A.2d 1174, 1178 (Del. 1997).

<sup>12</sup> *Id.* at 1178-79.

<sup>13</sup> *Id.* at 1178 (citing *Strickland*, 466 U.S. at 689).

previously held that counsel's pretrial decisions were reasonable, therefore, the Court will not re-address Defendant's complaints about counsel's pre-trial investigation. Second, for claims not previously addressed, Defendant neither explains why he failed to raise them on his first motion for postconviction relief nor "advance[s] any colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction."<sup>14</sup> Therefore, Defendant's newly-asserted claims are also barred. However, even if they were not barred, the claims are simply without merit. There is nothing to suggest that counsel was anything other than a professional and effective advocate for his client. While the Defendant perhaps perceives otherwise because of the trial's outcome, it is not supported by the record.

In addition, counsel is obligated to be frank and honest with his client regarding the difficulties he may find in defending the matter and how best to resolve the case. While these comments may be ones the client does not like to hear, in this case, the failure to follow this advice has resulted in a significant period of incarceration as a result of the Defendant's habitual status. The

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<sup>14</sup> *State v. Jones*, 2013 WL 2152198, at \*3 (Del. Super. May 20, 2013).

Defendant has only himself to blame for his present situation. As such, the Court finds Defendant's ineffective assistance of counsel claim without merit.

***Judicial Abuse of Discretion in Denying Appointment of Counsel***

12. Lastly, Defendant asserts that the Court abused its discretion in declining to appoint counsel for Defendant's first motion for postconviction relief. Defendant argues that the Court violated his state and federal constitutional rights in failing to appoint him counsel in his first motion for postconviction relief filed in 2006. He appears to argue that the United States Supreme Court decision in *Martinez v. Ryan*<sup>15</sup> and the Delaware Supreme Court's decision in *Holmes v. State*<sup>16</sup> created a newly-recognized retroactive right to counsel in order to overcome procedural bars of Rule 61. This argument was espoused of in the Delaware Supreme Court decision of *Roten v. State*.<sup>17</sup> There the Court explained:

The United States Supreme Court held in *Martinez v. Ryan* that inadequate assistance of counsel during initial postconviction proceedings may establish cause for a defendant's procedural default of a claim of ineffective assistance of counsel at trial in pursuing federal habeas corpus relief. Contrary to Roten's contention, *Martinez* does not hold that there is a federal constitutional right to counsel in first postconviction proceedings. Furthermore, Roten misreads this Court's decision in *Holmes v. State*. In *Holmes*, we held that the Superior Court abused its discretion in denying Holmes' motion for appointment of counsel to assist him in his first postconviction proceeding. We remanded for the appointment of counsel under the Superior Court's new Criminal Rule 61(e), which allows for the appointment of counsel in first postconviction proceedings. The rule was adopted May 6, 2013

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<sup>15</sup> 132 S. Ct. 1309 (2012).

<sup>16</sup> 2013 WL 2297072 (Del. May 23, 2013).

<sup>17</sup> No. 476, 2013 (Del. Oct. 28, 2013) (ORDER).

and is *not* retroactive. We did not hold in *Holmes* that a right to counsel in first postconviction proceedings exists as a matter of Delaware constitutional law.<sup>18</sup>

Therefore, absent an abuse of discretion in the Court's denial of appointment of counsel, Defendant was not entitled as a matter of constitutional law to have counsel appointed in his first motion for postconviction relief. Further, the Court finds nothing in its prior denial of counsel to be an abuse of discretion.

Having found that all of Defendant's claims for relief are without merit, the Defendant's Second Motion for Postconviction Relief is hereby **DENIED**.

**IT IS SO ORDERED.**

/s/ William C. Carpenter, Jr.

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Judge William C. Carpenter, Jr.

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<sup>18</sup> *Id.* at 3 (internal citations omitted).