

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

JOHN A. PARKINS, JR.  
*JUDGE*

NEW CASTLE COUNTY COURTHOUSE  
500 NORTH KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801-3733  
TELEPHONE: (302) 255-2584

April 29, 2014

Jason E. Walker  
SBI 00299079  
James T. Vaughn Correctional Center  
1181 Paddock Road  
Smyrna, Delaware 19977

**Re: State v. Jason E. Walker**  
**ID No. 0405000068**

Dear Mr. Walker:

Defendant has filed a motion requiring the State to provide him with a free copy of transcripts relating to his 2005 murder conviction. For the reasons which follow, that request is **DENIED**.

Defendant was charged with, among other things, two counts of capital murder, attempted robbery, kidnapping and weapons offenses. After a jury trial he was convicted of two counts of murder, two counts of attempted robbery-1, four counts of PFDCF, one count of unlawful imprisonment-1 and conspiracy-2.

The kidnapping charges were dismissed. He received two life sentences for the murder convictions and lengthy prison sentences for the remaining convictions. His convictions were affirmed on direct appeal.<sup>1</sup> Defendant later filed a motion for post conviction relief pursuant to Criminal Rule 61. This court denied certain claims on the merits and dismissed others as procedurally barred. Defendant appealed and the Supreme Court affirmed this court's decision.<sup>2</sup>

Within the past year the Delaware Supreme Court has twice held that a defendant does not have a right to transcripts at state expense simply for the purpose of pursuing a motion for post conviction relief.<sup>3</sup> Rather the question is addressed to the trial court's discretion.<sup>4</sup> A significant factor to be considered in the exercise of this discretion is whether defendant sets forth a colorable argument that a transcript would show he is entitled to post-judgment relief. Defendant makes no such showing here.

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<sup>1</sup> *Walker v. State*, 2007 WL481957 (Del.).

<sup>2</sup> *Walker v. State*, 2010 WL376878 (Del.).

<sup>3</sup> *Johnson v. State*, 2013 WL 6858400 (Del.); *Moore v. State*, 2013 WL 3179158 (Del.)

<sup>4</sup> Criminal Rule 61(d)(3) provides that the "judge may order preparation of the transcript."

This is Defendant's sixth *pro se* motion for transcripts. All five of his previous applications have been denied.<sup>5</sup> Defendant asserts in this motion that "all of the transcripts that are being requested are relevant to support petitioner's claims of ineffective assistance of counsel."<sup>6</sup> But Defendant's claims of ineffective assistance of counsel were rejected by this court in an earlier Rule 61 motion. Although Defendant appealed that decision, he chose not to appeal the denial of his ineffective assistance claims. As the Delaware Supreme Court noted in Walker's appeal:

Walker raised additional claims in his postconviction motion, which challenged the effective assistance of his counsel at trial. The Superior Court denied Walker's ineffectiveness claims, but Walker has raised no challenge to that aspect of the Superior Court's ruling in his opening brief on appeal. Accordingly, Walker's ineffective assistance of counsel claims are deemed to be waived<sup>7</sup>

Walker's waiver of his contentions on his appeal means that this court's findings that he was not denied effective assistance of counsel. Accordingly re-litigation of those claims is barred by

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<sup>5</sup> December 1, 2005; January 31, March 8, December 5, 2006; May 18, 2007.

<sup>6</sup> Defendant also asserts that he needs the transcripts in order to pursue a motion for appointment of counsel. He does not, however, explain why he needs the transcripts to do this.

<sup>7</sup> *Walker v. State*, 2010 WL 376979, \*1, n.1 (Del.)

Rule 61 (i)(4).<sup>8</sup> Defendant asserts that the exception in Rule 61(i)(5) provides an exception to the procedural bar. But that exception, by its terms, does not apply to the bar found in 61(i)(4).<sup>9</sup> For this reason alone Defendant's sixth request will be denied.

There is at least one other reason why the request will be denied. At least some of the transcripts Defendant requests have already been provided to him. Defendant acknowledges he had them in his possession for several years but claims they were taken from him roughly a year ago. He does not explain why he did not file whatever application he has in mind while he still has the transcripts. The court will not order a state agency or member of the Bar to search for and provide to a convicted defendant ancient documents merely upon his or her request. Rather the defendant must show a legitimate need for the documents and good cause why he no longer has them. Given

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<sup>8</sup> Superior Court Criminal Rule 61 (i)(4) provides:

Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice

<sup>9</sup> Superior Court Criminal Rule 61(i)(5) begins "[t]he bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to . . . ."

that any claim of ineffective assistance of counsel is now procedurally barred, Defendant cannot show a legitimate need for the transcripts. The court need not reach the Defendant's dubious explanation why he lost his copies.

Defendant's motion for transcripts is therefore **DENIED**.<sup>10</sup>

Very truly yours,

John A. Parkins, Jr.

oc: Prothonotary  
cc: Josette D. Manning, DAG, Department of Justice,  
Wilmington, Delaware

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<sup>10</sup> Defendant also requests production of personal information of one of the jurors. According to Defendant, during jury selection Defendant's counsel commented to him that a juror's name sounded familiar and he may have attended high school with someone by that name. He contends he needs this information "in order to run a search on the schools he attended." The court is not inclined to release juror information to unrepresented convicted jurors. Further, even assuming the juror and Defendant's counsel attended the same high school, the court accepts the oath of the juror that he answered the voir dire questions correctly. Those questions always include the question "are you familiar with any of the attorneys in the case?"