

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

STATE OF DELAWARE)	
)	
v.)	ID: 1003008726
)	
GEORGE SHAW,)	
)	
Defendant.)	

ORDER

Upon Defendant’s Motion For Postconviction Relief – *DENIED*;

Upon Court-Appointed Counsel’s Motion to Withdraw – *MOOT*.

1. After his conviction for burglary third degree and related charges in 2010 was affirmed on direct appeal in 2011,¹ and his petition for habeas corpus was denied in 2011, Defendant filed this, his first motion for postconviction relief on August 19, 2013.

2. Because this is Defendant’s first motion for postconviction relief under Superior Court Criminal Rule 61, counsel was appointed on December 20, 2013.² Counsel undertook what appears to have been a diligent review of the record

¹ *Shaw v. State*, 23 A.3d 866 (Del. 2011).

² Super. Ct. Crim. R. 61(e)(2).

and Defendant's potential claims. Thus, on May 15, 2014, counsel filed a thorough Memorandum In Support of Motion to Withdraw as Counsel for Petition. The paperwork indicates that Defendant was notified he had the opportunity under Rule 61 to file his own submission within thirty days, but he did not.

3. The petition and counsel's motion were properly referred³ and it appears that the petition should have been summarily dismissed upon preliminary review.⁴

4. According to Shaw's, *pro se*, initial filing, he challenges the March 11, 2010 seizure of his co-defendant, Michael Lathem's cell phone. That claim should have been raised before trial and on direct appeal, so it is procedurally defaulted.⁵ To the extent Defendant challenges counsel's effectiveness for not challenging the seizure, the court holds that Defendant had no standing to challenge the seizure of someone else's cell phone while it was in the other person's possession. Thus, neither the interest of justice nor the Constitution is implicated.

5. Second, Defendant alleges, without elaboration, that text messages were admitted into evidence without their author's testimony. According to Defendant, his confrontation right was violated. Actually, the cell phone's owner, co-

³ Super. Ct. Crim. R. 61(d)(1).

⁴ Super. Ct. Crim. R. 61(d)(4).

⁵ Super. Ct. Crim. R. 61(i)(3).

Defendant Lathem, testified the text exchange was between himself and Defendant. Lathem explained why he believed that although the cell phone was supposedly in his girlfriend's hands, Defendant was the actual texter. Accordingly, Defendant's accuser testified and was cross-examined. Moreover, Defendant's conviction did not rest directly on the cell phone records. It had more to do with Defendant's having been caught by the police in the act of burglarizing the car dealership.

6. Third, Defendant complains that the trial prosecutor allegedly had prosecuted Defendant before and "coerced co-defendant into statements at trial against [Defendant]." Like the other claims here, that one should have been raised sooner. Moreover, the claim does not form a basis for finding that Defendant's trial counsel was ineffective. Besides, Defendant's claim is unspecific and conclusory.

7. Defendant's fourth claim is, without his elaboration, "Prejudicial effect of the unsolicited responses were not raised at trial ... because lawyer did not want to draw attention to the statements to the jury." Defendant also claims the issue should have been raised by counsel on appeal. Defendant, however, does not specify what the unsolicited responses were and specifically how they may have accounted for his wrongful conviction. Defendant tacitly concedes that trial counsel made a tactical decision how to handle the unsolicited responses, whatever they were. The court observes, however, that unsolicited responses were a feature of the direct

appeal.⁶ Assuming they are Defendant's final claim, the way they were handled at trial was litigated at trial and on appeal.

8. Taking everything into account, Defendant's Rule 61 counsel has not missed anything. Nor has Defendant made a claim that merits further review in the interest of justice.

9. Last but not least, the motion is also time-barred.⁷

For the foregoing reasons, Defendant's Motion for Postconviction Relief is **DENIED**. Counsel's Motion to Withdraw is **MOOT**. Prothonotary **SHALL** notify Defendant.

IT IS SO ORDERED.

DATE: August 21, 2014

/s/ Fred S. Silverman

Judge

oc: Prothonotary (Criminal)
pc: Mark A. Denny, Deputy Attorney General
Joseph S. Grubb, Deputy Attorney General
Christopher S. Koyste, Esquire
George B. Shaw, Jr., Defendant

⁶ *Shaw*, 23 A.3d at 866.

⁷ Super. Ct. Crim. R. 61 (i)(1).