IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Cr. ID No. 9911016961
	)	
DARREL D. PAGE,	)	
	)	
Defendant.	)	
	)	

Submitted: December 18, 2018
Decided: February 26, 2019

COMMISSIONER'S REPORT AND RECOMMENDATION THAT DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF SHOULD BE SUMMARILY DISMISSED AND MOTION FOR APPOINTMENT OF COUNSEL SHOULD BE DENIED.

Sean P. Lugg, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Darrel Page, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se.*

PARKER, Commissioner

On December 11, 2018, Defendant Darrel Page filed the subject Rule 61 motion, his seventh Rule 61 motion.

OVERVIEW

In the subject motion, Page claims that the trial transcript of June 11, 2003 is no longer available, and therefore he is prevented from raising a prosecutorial misconduct claim stemming from the prosecutor's closing argument. Page, who is serving three life sentences and a term of years resulting from first degree murder convictions and other robbery and weapons convictions, seeks to have his convictions and sentences reversed because the trial transcript is no longer available.

The trial transcript of June 11, 2003 was transcribed and was available during all the critical stages of the proceedings: sentencing, direct appeal, and Page's first Rule 61 motion. Page was represented by counsel during all these critical stages of the case. Whatever meritorious issues that Page, with the assistance of counsel, desired to raise were raised on direct appeal and/or in Page's first Rule 61 motion, based on the full trial record.

This case illustrates why time-limitations are placed on the presentation of claims, and why those time-limitations must be adhered to. The trial was held in 2003. In 2011, Page requested a copy of this trial transcript at the State's expense. The Superior Court denied that request.

Page waited until December 2018, fifteen years after the trial, and seven years after he was denied the right to obtain a copy of this trial transcript at the State's expense, to seek to obtain a price quote in order to decide whether he wanted to purchase a copy of the trial transcript at his own expense.

By this late date, Page's lead counsel representing him at his first Rule 61 motion had retired, closed his office, and relocated. The court reporter that recorded his trial had retired and relocated. The Superior Court's file no longer contains this trial transcript. While it is conceivable that the State or the Delaware Supreme Court can still locate this trial transcript in their respective files, any effort to do so is unnecessary. Any potential claim that Page may have asserted stemming from the prosecutor's closing argument has long since been time-barred and is otherwise procedurally barred.

The existence or absence of the June 11, 2003 trial transcript at this late date does not give rise to any actionable claim. Page's subject motion, his seventh Rule 61 motion, is procedurally barred and should be summarily dismissed.

BACKGROUND, FACTS AND PROCEDURAL HISTORY

Page was convicted on June 17, 2003 of three counts of Murder in the First Degree, robbery, conspiracy and weapons charges. On February 24, 2006, Page was sentenced to life imprisonment, without the possibility of

parole, for each of the three counts of Murder in the First Degree plus a term of years on the other convictions.

Page's charges and resulting convictions stemmed from his actions on November 20, 1999. Page was a member of a large drug ring that sold crack cocaine and marijuana in Wilmington, Delaware. Cedric Reinford was the leader of the operation.[1] In early 1999, Page was arrested for trafficking in cocaine. Reinford provided Page money for his bail and counsel, and in return Page agreed to sell drugs for Reinford without taking any share of the profits.[2]

After nine months of this arrangement, Page formulated a plan to end it by killing Reinford. Page enlisted another member of the drug ring, Michael Jones, to help him carry out his plan.[3]

On November 20, 1999, Jones, Page and Reinford were together in Reinford's car in Wilmington. Jones killed Reinford by shooting him three times in the back of the head. Page and Jones then doused Reinford's car with gasoline and set it on fire with Reinford's body inside it.

Page and Jones proceeded to Reinford's house to take Reinford's drug money from a safe. Page knew that Reinford did not live alone in the house.

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[1] *State v. Page,* 934 A.2d 891, *894 (Del. 2007).

[2] *State v. Page,* 934 A.2d 891, *894 (Del. 2007).

[3] *State v. Page,* 934 A.2d 891, *894 (Del. 2007).

His fiancé, Manekka Plant, and her two sons, ages 11 and 6 weeks old, also resided there. Also staying at the home at the time was Reinford's brother Muhammed.

At the house, Jones and Page gained entry and searched for Reinford's drug money. They went upstairs to the bedroom where Manekka had been sleeping with her six-week-old baby.[4] They awoke Manekka demanding to know where Reinford hid his cash. Manekka began to panic, begging "don't kill my baby, please don't kill my baby." As Page searched the room for the drug money, Jones warned Manekka that her pleas were making him nervous. To show her that he meant business, Jones shot her in the foot.[5]

After being shot in the foot, Manekka became more hysterical. Jones ruthlessly shot her twice in the head, thus ending her life.[6] He then turned the gun on Muhammed, shooting him between the eyes and leaving him for dead.

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[4]Superior Court Docket No. 136- Sentencing Decision dated February 24, 2006, at pg. 5.

[5] Superior Court Docket No. 136- Sentencing Decision dated February 24, 2006, at pgs. 5-6.

[6] Superior Court Docket No. 136- Sentencing Decision dated February 24, 2006, at pg. 6.

Page and Jones fled to Philadelphia. Muhammad miraculously survived the shooting and called 911. He identified Page and Jones to the police.[7]

The police investigation led to the questioning of Page's girlfriend, Kim Still, who explained Page's plan to kill Reinford. After a ten-month manhunt that included an "America's Most Wanted" episode, Page was tracked down in Atlanta, Georgia and arrested on November 3, 2000. He was indicted on January 29, 2001.[8]

Page was tried before a Superior Court jury and convicted on June 17, 2003 of three counts of Murder in the First Degree, robbery, conspiracy and weapons charges. He was sentenced to life imprisonment without the possibility of parole for each of the three counts of Murder in the First degree plus a term of years.

Following Page's convictions and sentences, Page filed a direct appeal. On October 10, 2007, the Delaware Supreme Court affirmed his convictions and sentences.[9]

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[7] *State v. Page,* 934 A.2d 891, *894 (Del. 2007).

[8] *State v. Page,* 934 A.2d 891, *894 (Del. 2007).

[9] *State v. Page,* 934 A.2d 891 (Del. 2007).

Thereafter, Page filed six Rule 61 motions, all of which have been unsuccessful[10].

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[10] Page's first Rule 61 motion was filed on October 10, 2008. Page was represented by counsel on his first motion for postconviction relief raising ineffective assistance of counsel and other claims. Following the submission of affidavits, an evidentiary hearing and several remands, the Superior Court ultimately denied Page's motion. Superior Court Docket No. 203- March 17, 2010 Superior Court Opinion denying Page's first motion for postconviction relief. The denial was affirmed by the Delaware Supreme Court on May 11, 2010. *Page v. State,* 2010 WL 2169506 (Del.).

Page's second Rule 61 motion was filed on March 11, 2011. Page, acting *pro se,* raised ineffective assistance of counsel and trial errors based on purported newly discovered evidence. The Superior Court denied Page's second Rule 61 motion, *State v. Page,* 2011 WL 1213841 (Del.Super.). The denial was affirmed by the Delaware Supreme Court on January 3, 2012. *Page v. State,* 2012 WL 11615 (Del.), *reh'g denied,* (January 24, 2012).

Page's third Rule 61 motion was filed on March 19, 2013. Page, acting *pro se,* raised ineffective assistance of counsel claims and prosecutorial misconduct claims. The Superior Court dismissed the motion on August 13, 2013. *State v. Page,* 2013 WL 4828600 (Del.Super.). The Delaware Supreme Court affirmed the dismissal of the third Rule 61 motion on December 4, 2013. *Page v. State,* 2013 WL 6389595 (Del.).

Page's fourth Rule 61 motion was filed on May 21, 2014. Page, acting *pro se,* raised an ineffective assistance of counsel claim. On August 27, 2014, the Superior Court denied this motion. *State v. Page,* 2014 WL 4348286 (Del.Super.). The Delaware Supreme Court affirmed the denial of Page's fourth motion on January 29, 2015. *Page v. State,* 2015 WL 428107 (Del.).

Page's fifth Rule 61 motion was filed on November 30, 2016. This motion was denied by the Superior Court, *State v. Page,* 2018 WL 731710, *2 (Del.Super.), and the denial was affirmed by the Delaware Supreme Court on September 6, 2017. *Page v. State,* 2017 WL 3909123 (Del.).

He has also filed two unsuccessful petitions for federal habeas corpus relief.[11]

PAGE'S SUBJECT RULE 61 MOTION

Page filed the subject Rule 61 motion, his seventh motion, on December 11, 2018. In the subject motion, Page claims that the trial transcript of June 11, 2003 is no longer available and, therefore, he is prevented from raising a prosecutorial misconduct claim arising from an allegedly improper remark made by the prosecutor during his closing.

Before Page is entitled to proceed with the subject Rule 61 motion, he

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Page's sixth Rule 61 motion was filed on January 25, 2018. On January 29, 2018, the Superior Court summarily dismissed this motion. *State v. Page,* 2018 WL 731710, *2 (Del.Super.).

[11] Page's first petition for federal habeas corpus relief was filed on May 2013. In that petition, he raised the claims he previously raised on direct appeal and in his Rule 61 motions. On April 24, 2014, the federal district court denied Page's petition for habeas relief as time-barred. *Page v. Pierce et al.,* 2014 WL 1652657 (D.Del.).

About two years after the denial of Page's first petition for federal habeas corpus relief, on June 16, 2015, Page filed a second petition for federal habeas relief that he captioned a motion for reconsideration and additional claims for relief of his habeas petition. *Page v. Pierce et al.,* 2016 WL 183508 (D.Del.). Page requested that the federal court reconsider and/or reopen his habeas petition that was denied in April 2014. On January 14, 2016, the federal district court denied Page's second petition for habeas relief as procedurally barred and lacking in merit. *Page v. Pierce et al.,* 2016 WL 183508, *4 (D.Del.).

must first satisfy the pleading requirements. Page filed the subject Rule 61 motion in 2018, and it is the Rule 61 in effect at the time of the filing of this motion that is applicable.[12]

The applicable Rule 61 mandates that Page's motion is to be summarily dismissed unless he establishes: 1) that *new* evidence exists that creates a strong inference that he is actually innocent of the charges 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.[13] 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.[14]

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

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[12] See, *Bunting v. State,* 2015 WL 2147188, ftnt. 7 (Del.).

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

[14] Super.Ct.Crim.R. 61(d)(5).

In order to establish that new evidence exists, Page must show: (1) that the evidence is such as will probably change the result if a new trial is granted; (2) that it has been discovered since the trial and could not have been discovered before by the exercise of due diligence; and (3) that it is not merely cumulative or impeaching.[15]

Page cannot meet this showing. The evidence of Page's guilt was overwhelming at trial.[16] In this seventh Rule 61 motion, Page contends only that if the June 11, 2003 trial transcript was available, he would be able to raise a possible claim of prosecutorial misconduct. Page contends that he seems to recall the prosecutor saying something about the victim being tortured in order to provide the combination to the safe.

First, this claim of prosecutorial misconduct does not stem from any *new* evidence. Let alone, any *new* evidence that would probably change the result if a new trial is granted. The trial was held in 2003, fifteen years ago. The June 11, 2003 trial transcript was transcribed on September 12, 2005.[17] Page was represented by counsel at trial (in 2003), at his sentencing (in 2006), on direct

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[15] *State v. Page,* 2014 WL 4348286, *2 (Del.Super.), *citing, State v. Wright,* 653 A.2d 288, 298 (Del.Super.1994).

[16] See, *State v. Page,* 2011 WL 1213841, *4-5 (Del.Super.).

[17] See, Superior Court Docket No. 134.

appeal (2007) and on his first Rule 61 motion (decided in 2010). The June 11, 2003 trial transcript, as well as all the other transcripts from all the other days of trial, had been transcribed and were available at all the critical stages of the proceedings.[18]

At all these crucial stages, Page, represented by counsel, raised those meritorious issues that they felt were the strongest. Counsel is not required to present any and all non-frivolous issues that may exist on direct appeal.[19] Counsel should be shifting through the record and raising only the strongest claims, those that are most likely to prevail.[20] Counsel may determine that

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[18] The June 11, 2003 trial transcript was transcribed in 2005. See, Superior Court Docket No. 133. It was available for Page's direct appeal. See, *State v. Page,* 2013 WL 4828600, *5 (Del.Super.); Superior Court Docket No. 138.

Page's counsel representing him on his first Rule 61 represented to the Delaware Supreme Court that no further transcription of the proceedings was needed for the Rule 61 motion because all the trial transcripts, including the June 11, 2003 trial transcript, had already been transcribed. See, Superior Court Docket No. 168- May 27, 2009 Appeal to the Delaware Supreme Court; *State v. Page,* 2018 WL 731710, *2 (Del.Super.) (Rule 61 counsel provided an Affidavit restating that counsel had requested and obtained trial transcripts from the entire trial.)

[19] See, *Washington v. State,* 945 A.2d 1168 (Del. 2008); *State v. Merritt,* 2012 WL 5944433, *7 (Comm'r Del.Super.), *affirmed,* 77 A.3d 272 (Del. 2013).

[20] See, *Washington v. State,* 945 A.2d 1168 (Del. 2008); *State v. Merritt,* 2012 WL 5944433, *7 (Comm'r Del.Super.), *affirmed,* 77 A.3d 272 (Del. 2013).

weaker arguments should not be raised so as not to detract from stronger arguments advanced.[21]

The testimony at trial established that Jones shot Manekka Plant in the foot as Page and Jones were searching for the drug money kept by Reinford in a safe. A prosecutor is, of course, entitled to argue all legitimate inferences of guilt that flow from the evidence presented at trial.[22]

Counsel on direct appeal and counsel on Page's first Rule 61 motion had all the trial transcripts and raised the strongest issues they believed to exist based on the entire record. For that matter, Page, himself, raised additional claims in his first Rule 61 motion, and thereafter raised claims in five subsequent Rule 61 motions, and two federal petitions for habeas corpus relief. There is no reason why Page could not have raised this claim in any of his prior motions and petitions.

After a full, thorough, and careful consideration of claims raised by Page in his direct appeal, and thereafter in his first Rule 61 motion, the Superior Court opined, and the Delaware Supreme Court affirmed, that Page had

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[21] See, *Washington v. State,* 945 A.2d 1168 (Del. 2008); *State v. Merritt,* 2012 WL 5944433, *7 (Comm'r Del.Super.), *affirmed,* 77 A.3d 272 (Del. 2013).

[22] *Ruffin v. State,* Del.Supr., No. 367, 2018, *4 (February 19, 2019).

suffered no deprivation of constitutional rights, by counsel, the Superior Court, the State, or otherwise.[23]

The alleged claim of prosecutorial misconduct stemmed from a statement made by the prosecutor at trial in 2003, over fifteen years ago. The alleged misconduct, to the extent any prosecutorial misconduct existed, does not appear to amount to anything more than harmless error given the grisly facts of the overwhelming evidence in this case.

There is no reason why Page could not have raised this claim on direct appeal or in his first Rule 61 motion if this claim truly had any merit. Page has not met his burden to establish that *new* evidence exists that creates a strong inference that he is actually innocent of the charges for which he was convicted. Page has not satisfied the pleading requirements for proceeding with this motion. In accordance with the mandates of Rule 61, Page's Rule motion should be summarily dismissed.[24]

Page's motion also falls short of other procedural requirements that must be met in order to proceed with the merits of this claim. If a procedural bar

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[23] See, *State v. Page,* 2014 WL 4348286, *2 (Del.Super.).

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

exists, then the claim is barred and the court should not consider the merits of the claim.[25]

Rule 61 (i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;[26] (2) any basis for relief must be asserted in the first timely filed motion for postconviction relief absent exceptional circumstances (i.e. discovery of *new* evidence or *new* rule of constitutional law) warranting a subsequent 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 the movant is actually innocent or that there is a new law, made retroactive, that would render the conviction invalid.[27]

In the subject action, Page's subject motion is time-barred. The final order of conviction was in 2007,[28] and this motion was filed in December 2018,

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

[26] Super.Ct.Crim.R. 61(i)(1).

[27] Super.Ct.Crim.R. 61 (effective June 4, 2014).

[28] Super.Ct.Crim.R. 61(m)(2).

about eleven years later.[29] This motion was filed well outside the applicable one year limit. Page's claims, at this late date, are time-barred.

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

Rule 61(i)(3) also prevents this court from considering any claim raised by Page at this late date that had not previously been raised. Any claim of prosecutorial misconduct not raised on direct appeal is thereafter barred.[30]

In 2011, Page sought to obtain this trial transcript, at the State's expense. The request was denied.[31] There is no excuse for Page waiting an additional seven years, until 2018, to seek to obtain a copy of this trial transcript at his own expense. By this late date, fifteen years after the trial was conducted (in

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[29] Super.Ct.Crim.R. 61(i)(1).

[30] Super.Ct.Crim.R. 61(i)(3); *Ruffin v. State*, Del.Supr., No. 367, 2018, *4 (February 19, 2019).

[31] See, Superior Court Docket Nos. 214 & 215.

2003), eleven years after Page's direct appeal was decided (in 2007), and eight years after Page's first Rule 61 motion was decided (in 2010), the court reporter who recorded the trial had retired and relocated.[32] Page's counsel on his first Rule 61 motion, decided in 2010, had retired, closed his law practice, and relocated.[33] This transcript cannot now be located in the Superior Court's file.[34]

This case provides a stark example of why time-limitations are placed on the presentation of claims and must be adhered to.

When Page attempted to raise a prosecutorial misconduct claim in his third Rule 61 motion, filed in 2013, and sought to obtain trial transcripts in order to raise that prosecutorial misconduct claim, the Superior Court advised Page that any claim for prosecutorial misconduct was procedurally barred for his failure to timely raise a claim of prosecutorial misconduct and his request for transcripts was denied.[35] The Superior Court held that Page's claim of

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[32] Superior Court Docket No. 280- Page's December 11, 2018 Motion for Postconviction Relief, at Appendix A-40.

[33] *State v. Page,* 2018 WL 731710, *2 (Del.Super.).

[34] Superior Court Docket No. 280- Page's December 11, 2018 Motion for Postconviction Relief, at Appendix A-40.

[35] *State v. Page,* 2013 WL 4828600, *5 (Del.Super.).

prosecutorial misconduct for alleged improper statements made during closing arguments was procedurally barred and that Page presented no colorable claim that would justify the preparation of the trial transcripts requested.[36] The Delaware Supreme Court affirmed the dismissal of the third Rule 61 motion and the denial of the trial transcripts.[37]

When Page sought to raise a claim arising out of the trial proceedings in his fourth Rule 61 motion, again the Superior Court advised him that any claim arising out of the trial proceedings was procedurally barred.[38] The Superior Court held that Page already had more than ample opportunity to raise claimed deprivations of his constitutional rights during the proceedings leading to his convictions, direct appellate proceedings, and during the lengthy proceedings of his first three motions for postconviction relief.[39]

Page's latest attempt to seek to raise a claim of prosecutorial misconduct, like his previous attempts, is procedurally barred. Page was aware of, had time to, and the opportunity to raise the claim presented herein in a

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[36] *State v. Page,* 2013 WL 4828600, *5 (Del.Super.).

[37] *Page v. State,* 2013 WL 6389595 (Del.).

[38] *State v. Page,* 2014 WL 4348286, *2 (Del.Super.).

[39] *State v. Page,* 2014 WL 4348286, *2 (Del.Super.).

timely filed motion. Page's claim raised in the subject motion stems from facts known to him at the time of trial in 2003. Page does not raise anything new or recently discovered.

Page has not established any prejudice to his rights and/or cause for relief. Page has not demonstrated a miscarriage of justice that would excuse his claim from the procedural bars set forth in Rule 61 which prohibits Page from obtaining the relief he requests. In the prior proceedings, the Superior Court has opined, and the Delaware Supreme Court has affirmed, that Page has suffered no deprivation of constitutional rights, by counsel, the Court, the State, or otherwise.[40] Page has asserted no credible reason why his possible new claim could not have been raised in the prior Rule 61 motions, and the claim does not constitute newly discovered evidence that would warrant consideration of his claim at this late date.[41]

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

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[40] See, *State v. Page,* 2014 WL 4348286, *2 (Del.Super.), *aff'd,* 2015 WL 428107 (Del.).

[41] See, *State v. Page,* 2014 WL 4348286, *2-3 (Del.Super.) *aff'd,* 2015 WL 428107 (Del.).

REQUEST FOR COUNSEL IS DENIED

Page's request for the appointment of counsel is denied. Rule 61, as amended effective June 4, 2014, provides that for second and subsequent postconviction relief motions, such as the subject motion, counsel is to be appointed only in limited exceptional situations.[42] Having fully, thoroughly and carefully considered Page's motion and the evidentiary record, none of the exceptional circumstances giving rise to the entitlement to the appointment of counsel exist in this case.[43] Since Page has failed to overcome the procedural hurdles warranting the appointment of counsel in this untimely, seventh postconviction motion, the appointment of counsel is denied.

CONCLUSION

The existence or absence of the June 11, 2003 trial transcript at this late date, over fifteen years after the trial was held, is of no consequence since any claim of alleged prosecutorial misconduct stemming from the prosecutor's closing argument has long since been time-barred and is otherwise procedurally barred.

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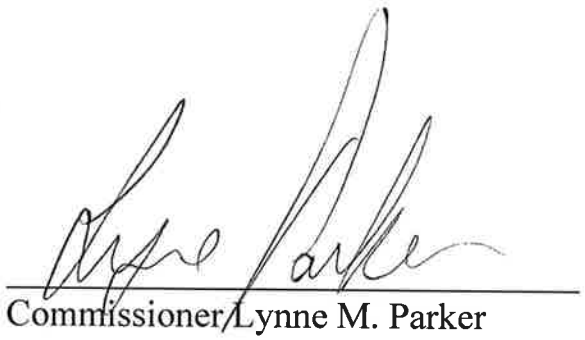
[42] Super.Ct.Crim.R. 61(e)(4).

[43] Super.Ct.Crim.R. 61(e)(4).

For all of the foregoing reasons, Page's Motion for Postconviction Relief should be summarily DISMISSED, and the request for the Appointment of Counsel is DENIED.

IT IS SO RECOMMENDED.



Commissioner Lynne M. Parker

cc: Prothonotary
James E. Liguori, Esquire