

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
v.	)	
	)	I.D. # 2402000019
TYRELL L. BURTON,	)	
	)	
Defendant.	)	
	)	

Submitted: July 8, 2024
Decided: October 31, 2025

ORDER DENYING RULE 61 MOTIONS

*Upon the Rule 61 Motion for Postconviction Relief – **DENIED.***
*Upon the Rule 61 Motion for Appointment of Counsel – **DENIED.***

Tyrell Burton, *Pro Se Defendant.*
Matthew Hicks, *Deputy Attorney General*

VAVALA, J.

I. INTRODUCTION

Tyrell L. Burton (“Burton”), filing pro se, moves this Court for postconviction relief (“PCR Motion”)¹ and the appointment of counsel (“Motion for Counsel”)² (collectively, “Motions”) pursuant to Delaware Superior Court Criminal Rule 61 (“Rule 61”).³ In support thereof, Burton asserts (1) his sentence was illegally enhanced and (2) his right to effective assistance of counsel was denied at both the trial and appellate levels.⁴

Burton’s collateral attack on his sentence as “illegally enhanced” is procedurally barred, conclusory, and unsubstantiated.⁵ Burton’s claims of ineffective assistance of counsel (“IAC”), at both the trial level and the appellate level, fail on the merits under the two-prong test set forth in *Strickland v. Washington* because counsels’ conduct was objectively reasonable and Burton failed to establish a substantial likelihood of a different outcome.⁶ Finally, Burton is not entitled to the

¹ See *State v. Tyrell Burton*, Case No. 2402000019, Docket Item [“D.I.”] 27, Motion for Postconviction Relief [“PCR Mot.”]. Unless otherwise noted all references herein refer Case No. 2402000019.

² D.I. 28, Motion for the Appointment of Counsel in a Postconviction Relief Proceeding [“Mot. for Counsel”].

³ Del. Super. Crim. R. [“Rule”] 61.

⁴ PCR Mot. at 3. Defendant also filed a Rule 35(a) motion for sentence modification based upon an illegally enhanced sentence that is stayed. D.I. 26.

⁵ Rule 61(i)(3).

⁶ *Albury v. State*, 551 A.2d 53 (Del. 1988) (adopting the test from *Strickland v. Washington*, 466 U.S. 668 (1984) requiring defendant to show (1) that counsel’s performance was deficient; (2) counsel’s ineffectiveness was prejudicial). See also *Starling v. State*, 130 A.3d 316 (Del. 2015)

appointment of counsel in these circumstances under Rule 61(e). Accordingly, the Motions are DENIED.

II. BACKGROUND

After an administrative search of his motel room, supported by an anonymous tip and police corroboration with motel staff, Burton was indicted for various drug- and firearms offenses: Possession of a Firearm by a Person Prohibited (“PFBPP”), Drug Dealing (3 counts); Drug Possession (2 counts); and Possession of a Firearm During the Commission of a Felony.⁷ At the time of these offenses, Burton was on probation in an unrelated case;⁸ so the Department of Probation and Parole filed a violation of probation (“VOP”) in that matter.

Burton’s trial counsel moved the court to suppress the evidence gathered from the search.⁹ Prior to resolution of the suppression motion, however, Burton, with the assistance of counsel, pled guilty to PFBPP and the VOP.¹⁰ As required, Burton signed the Plea Agreement, Truth-in-Sentencing Guilty Plea Form (“TIS Form”),

(applying the *Strickland* test); *Terrero-Ovalles v. State*, 2019 WL 2355019, at *2 (Del. June 3, 2019) (TABLE) (same).

⁷ D.I. 5, Indictment. *See also* *Burton v. State*, 2025 WL 1167188 (Del. Apr. 22, 2025) (ORDER) (TABLE) [“Order on Appeal”].

⁸ *See State v. Tyrell Burton*, Case No. 2103012489.

⁹ D.I. 7, Motion to Suppress.

¹⁰ D.I. 19, Plea Hearing Transcript [“Plea Hrg. Tr#”] 7:11-16, 9:15–11:21, 18:16-20. *See also* D.I. 13, Plea Agreement [“Plea Agr.”], Truth-in-Sentencing Guilty Plea Form [“TIS Form”], and Immediate Sentencing Form.

and Immediate Sentencing Form.¹¹ In exchange for Burton’s guilty plea, the prosecution agreed to dismiss the remaining charges in the indictment and a second, separate case pending in the Court of Common Pleas (“CCP”).¹² For the PFBPP charge, the State also agreed to cap its total unsuspended Level V recommendation to the 10-year Level V minimum sentence,¹³ followed by Level III probation, and a recommendation of probation on the VOP.¹⁴ The State’s dismissals and recommendations regarding sentencing provided a substantial benefit to Burton.¹⁵

During the plea colloquy, Burton knowingly, intelligently, and voluntarily pled guilty.¹⁶ He was advised of his constitutional rights, including his trial and appellate rights, and waived them.¹⁷ Burton understood the minimum sentence the Court could impose was 10 years Level V due to his prior convictions for PFBPP in 2015, Assault Second Degree in 2012, and Possession with Intent to Deliver a Controlled Substance in 2006.¹⁸ By signing the Plea Agreement and TIS Form,

¹¹ See Plea Agr., TIS Form, and Immediate Sentencing Form.

¹² Plea Agr.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Had Burton been convicted of all the charges, he would have faced significantly more Level V time, including other minimum mandatory sentences.

¹⁶ Plea Hrg. Tr. at 7:11-16, 9:15–11:21, 18:16-20.

¹⁷ *Id.* at 19:11-22:8-10. See also TIS Form.

¹⁸ See TIS Form and Immediate Sentencing Form. See also 11 Del. C § 1448(c) (effective through Oct. 31, 2024) (providing that PFBPP is a class C felony if the person has previously been convicted of a violent felony under the circumstances set forth in Section 1448(e)(1)), *found unconstitutional on other grounds, Birney v. Delaware Dept. of Safety and Homeland Security*,

Burton acknowledged the sentencing range for PFBPP was 10-15 years Level V¹⁹ with the potential of an additional 0-4 years Level V on the VOP.²⁰ He specifically acknowledged that he understood that he would serve 10 years at Level V as a minimum sentence.²¹ He stated he was satisfied with trial counsel's representation.²²

Consistent with the Plea Agreement, the Court sentenced Burton to 15 years of Level V, suspended after 10 years at Level V (minimum mandatory), for 1 year of Level III probation.²³ For the VOP, the Court sentenced Burton to 4 years Level V, suspended for 1 year of concurrent Level III probation.²⁴

On direct appeal, Burton's appellate counsel filed a brief and a motion to withdraw under Supreme Court Rule 26(c),²⁵ averring that, after careful and complete review of the record, there were no arguably appealable issues.²⁶ Prior to filing, appellate counsel provided Burton with a copy of the motion to withdraw and accompanying brief, and informed Burton of his right to supplement counsel's

2025 WL 2489468 (Del. Super. Aug. 29, 2025)). *See also* 11 Del. C. § 1448(e)(1) (triggering a minimum sentence of 10 years Level V for PFBPP with two prior violent felony convictions).

¹⁹ *Id.*

²⁰ *See* Plea Agt. and TIS Form.

²¹ *Id.* at 13-14, 19:23-20:5, and 26:21-27:5.

²² *Id.* at 21:8-11. *See also* TIS Form.

²³ D.I. 14, Sentence Order.

²⁴ *See* Case No. 2103012489, Violation of Probation Sentence Order.

²⁵ Del. Supr. R. 26(c).

²⁶ *Id.*

representation.²⁷ Counsel then included Burton’s supplemental points in the brief submitted to the Supreme Court.

Burton’s appeal did not raise claims regarding either an illegally enhanced sentence or ineffective assistance of counsel.²⁸ Instead, Burton’s appeal attacked the sufficiency of the administrative warrant.²⁹ The Supreme Court found Burton had waived the right to challenge his search and arrest by knowingly, intelligently, and voluntarily pleading guilty.³⁰ The Supreme Court further held that appellate counsel’s conduct was satisfactory under Rule 26(c) because Burton’s appeal was “wholly without merit and devoid of any arguably appealable issue.”³¹

Burton now moves this Court for postconviction relief, arguing his sentence was illegally enhanced by the trial court without due process of law, and asserting ineffective assistance of counsel (“IAC”) against both trial and appellate counsel.³²

²⁷ Order on Appeal at 3.

²⁸ Brief of Appellant, *Burton v. State*, No. 2402000019 (Del. 2024).

²⁹ Order on Appeal at 4. Burton argued that the administrative warrant did not support a finding of probable cause because of the misaligned timing of the administration search and issuance of arrest warrant. *Id.* Violation of probation documents indicated the search began shortly after midnight while the affidavit of probable cause indicated the arrest warrant was issued at 2:17 a.m. on February 1, 2024. *Id.* The Supreme Court reasoned that this indicated that events unfolded over the course of a few hours, and therefore did not constitute a violation. *Id.*

³⁰ Order on Appeal at 4.

³¹ *Id.*

³² PCR Mot. at 3.

Burton also moves for the appointment of counsel to represent him in his PCR Motion.³³

III. STANDARD

Rule 61 provides incarcerated individuals a chance to seek redress from a prior conviction or sentence by setting aside a conviction if the Court lacked jurisdiction or if there is a sufficient factual and legal basis for a collateral attack on the conviction.³⁴ The Rule is “intended to correct errors in the trial process, not to allow defendants unlimited opportunities to relitigate their convictions.”³⁵ Before reaching the merits of any Rule 61 claim, the Court must consider the Rule 61(i) procedural bars to relief: (1) the motion must be filed within one year of the conviction’s finality or a retroactive right; (2) repetitive motions are prohibited unless certain requirements are met; (3) issues not raised before conviction are deemed waived unless cause or prejudice is shown; and (4) claims already finally adjudicated on the merits are precluded.³⁶ Defendant bears the burden to establish his entitlement to

³³ *Id.*

³⁴ Rule 61(a)(1).

³⁵ *Ploof v. State*, 75 A.3d 811, 820 (Del. 2013), *as corrected* (Aug. 15, 2013).

³⁶ Rule 61(i) (1–4). *See also Maxion v. State*, 686 A.2d 148, 150 (Del. 1996); *State v. Jones*, 2002 WL 31028584, at *2 (Del. Super. Sept. 10, 2002).

relief and the Court “will not address claims for postconviction relief that are conclusory or unsubstantiated.”³⁷

IV. DISCUSSION

Postconviction relief is only granted when a defendant clears the procedural hurdles of Rule 61 and the claims substantively merit relief. As detailed below, although Burton’s PCR Motion is his first, and timely filed, his claims collaterally challenging his conviction and sentence fail because they are procedurally barred by Rule 61(i)(3), conclusory, unsubstantiated, and lack merit.

A. Burton’s PCR Motion is timely filed.

Under Rule 61(i)(1), a motion for postconviction relief may not be filed more than one year after the judgement of conviction is final.³⁸ PCR motions that assert a previously inapplicable right, however, may be filed within one year from when that right was first recognized by the Supreme Court.³⁹ In *Jackson v. State*, the Supreme Court determined that a “final” judgement of conviction depends on whether sentencing resulted from a guilty plea or a finding of guilt.⁴⁰ For a guilty

³⁷ *State v. Guinn*, 2006 WL 2441945, at *4 (Del. Super. Aug. 16, 2021). See also *Gattis v. State*, 697 A.2d 1174, 1178-79 (Del. 1997); *Younger v. State*, 580 A.2d 552, 556 (Del. 1990); *State v. McNally*, 2011 WL 7144815, at *5 (Del. Super. Nov. 16, 2011); *State v. Wright*, 2007 WL 1982834, at *1 n.2 (Del. Super. July 5, 2007).

³⁸ Rule 61(i)(1).

³⁹ *Id.*

⁴⁰ *Jackson v. State*, 654 A.2d 829, 832 (Del. 1995).

plea, conviction is final at sentencing because the guilty plea forecloses the defendant from any appeal underlying the conviction.⁴¹ Burton was sentenced on July 15, 2024 after pleading guilty.⁴² His PCR Motion was filed on July 8, 2025.⁴³ Thus, Burton’s PCR Motion is timely filed.

Second or subsequent motions for postconviction relief are summarily dismissed, except under limited circumstances.⁴⁴ Here, the docket indicates this is Burton’s first motion for postconviction relief in this case; so, it is not repetitive.

B. Burton’s claim he was illegally sentenced is procedurally barred under Rule 61, conclusory, unsubstantiated, and meritless.

Any ground for relief not asserted in the proceedings leading to the judgment of conviction is waived as procedurally defaulted, unless the movant shows: (1) cause for relief from the procedural default; and (2) prejudice from violation of the movant’s rights.⁴⁵ To establish “cause,” the movant must demonstrate that an “external impediment” prevented him from raising the issue earlier.⁴⁶ In *Younger v. State*, a postconviction relief movant, who did not timely raise his challenges to his convictions, was required to show both “cause” for relief and “actual prejudice”

⁴¹ *Id.*

⁴² PCR Mot. 1.

⁴³ *Id.*

⁴⁴ Rule 61(d)(2).

⁴⁵ Rule 61(i)(3).

⁴⁶ 580 A.2d 552, 556 (Del. 1990).

resulting from an alleged error.⁴⁷ The Supreme Court held that merely alleging cause and prejudice from some abstract error is insufficient to overcome a procedural default.⁴⁸ Here, because Burton failed to raise the claim of an illegal sentence enhancement in a proceeding leading to his conviction, his claim must be treated as a procedural default and scrutinized under the cause and prejudice standard.

Burton's claim he was illegally sentenced is barred because it is conclusory, unsubstantiated, and fails to demonstrate cause for relief. He asserts only, "Illegal Sentence . . . The courts violated my 5th and 6th Amendment by giving me an enhanced sentence without following the due process of law that is mandated to give an enhanced sentence."⁴⁹ This bare statement is insufficient to establish cause.⁵⁰ Nor does Burton offer *any* explanation for his failure to raise the claim that he was illegally sentenced, let alone demonstrate that an "external impediment" prevented him from raising the issue earlier.⁵¹

To the contrary, the issue of Burton's enhanced sentencing was discussed prior to, and during, his guilty plea and sentencing. Burton was advised during the plea

⁴⁷ *Id.*

⁴⁸ *Id.* The Court held that Younger made a "conclusory statement regarding his allegations of ineffectiveness of counsel" and that "such a statement does not lead us to the conclusion that the claim should be considered under [Rule 61.]"

⁴⁹ PCR Mot. at 3.

⁵⁰ *Younger*, 580 A.2d at 556 (a mere allegation of IAC was insufficient to demonstrate cause).

⁵¹ *Younger*, 580 A.2d at 556.

colloquy, and on the TIS Form, that 10 years Level V was the mandatory minimum sentence for the charges to which he was pleading guilty.⁵² Burton confirmed he voluntarily waived his appellate rights⁵³ and stated he understood he faced 10 years at Level V as a minimum sentence.⁵⁴ While Burton wasn't necessarily happy about the 10-year minimum, he accepted it as mandated by law.⁵⁵ Accordingly, Burton has failed to establish any "external impediment" that prevented him from raising the issue at the plea and sentencing hearing.⁵⁶

Nor has Burton established any *actual prejudice* from a violation of his due process rights. Illegal sentences include those that exceed statutory limits, violate double jeopardy, are ambiguous regarding the time and manner of service, are internally contradictory, omit a statutorily required term, are uncertain in substance, or are unauthorized.⁵⁷ None of those circumstances are present here.

The sentence Burton is currently serving is not illegal because it is well within the statutory limits. The Delaware Criminal Code, enacted by the state legislature, sets forth the statutory ranges for crimes and, in some instances, mandates minimum

⁵² Plea Hrg. Tr. 13-14, 19:23-20:5, 26:21-27:5.

⁵³ *Id.* at 19:11-22. *See also* TIS Form.

⁵⁴ *Id.* at 13-14, 19:23-20:5, 26:21-27:5.

⁵⁵ *Id.* at 26:2-27:11.

⁵⁶ *Younger*, 580 A.2d at 556.

⁵⁷ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1988) (citations omitted).

periods of incarceration for crimes if an offender has certain prior convictions. PFBPP is one of those crimes.⁵⁸ Because Burton was previously convicted of two prior violent felonies, he was subject to a statutory minimum period of incarceration of 10 years Level V for the PFBPP charge.⁵⁹ The sentencing judge had no authority to suspend the minimum mandatory portion of that sentence.⁶⁰

Likewise, when the penalty for a violation of probation is imprisonment, the sentence should be within the presumptive sentencing range SENTAC⁶¹ prescribes for the original crime for which the probation was being served.⁶² And here, it was. For the VOP, the Court sentenced Burton to 4 years of imprisonment, suspended for 1 year of concurrent Level III probation.⁶³ As confirmed on the TIS Form Burton signed at his plea hearing, Burton had 4 years of Level V back-time that could have been imposed.⁶⁴ Burton's sentence of probation for the VOP is not illegal because

⁵⁸ See 11 *Del. C.* § 1448(c) (classifying PFBPP as a Class C felony where a person is subject to sentencing under subsection (e)) and § 1448(e)(2)(c) (requiring the minimum imposition of 10 years at Level V with two or more separate convictions for violent felonies).

⁵⁹ See 11 *Del. C.* § 1448(c) (classifying PFBPP as a Class C felony where a person is subject to sentencing under subsection (e)) and § 1448(e)(2)(c) (requiring the minimum imposition of 10 years at Level V with two or more separate convictions for violent felonies).

⁶⁰ 11 *Del. C.* § 4205(d).

⁶¹ The Delaware Sentencing Accountability Commission [“SENTAC”] at 41 (2023).

⁶² SENTAC at 130.

⁶³ Order on Appeal at 2.

⁶⁴ Plea Hrg. Tr. at 14.

it was well within the statutory range and consistent with SENTAC guidelines for the crimes to which he pled guilty.

Because Burton did not raise the claim of illegal sentencing enhancement at any prior proceedings and has failed to demonstrate good cause for that failure or actual prejudice resulting from a violation of his rights, his claim is procedurally barred under Rule 61(i)(3).

C. Burton fails to overcome the presumption that trial and appellate counsels' conduct was objectively reasonable or establish prejudice.

Generally, allegations of IAC are not subject to procedural default under Rule 61 because such allegations cannot normally be raised in proceedings leading to conviction.⁶⁵ To prevail on a claim of IAC under the *Strickland* test, the movant must show (1) counsel's conduct fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's alleged error, the outcome would have been different.⁶⁶ Under the first prong of *Strickland*, there is a presumption that counsel's representation was objectively reasonable.⁶⁷ Under the second prong, Burton must show that he suffered prejudice as a result of counsels' deficient performance.⁶⁸ That is, Burton must show "there is a reasonable

⁶⁵ *Kellam v. State*, 341 A.3d 475, 490 (Del. May 13, 2025) (citing *Strickland*, 466 U.S. at 689).

⁶⁶ *Terrero-Ovalles*, 2019 WL 2355019, at *2.

⁶⁷ *Stone v. State*, 690 A.2d 924, 925 (Del. 1996).

⁶⁸ *Kellam* 341 A.3d at 490 (quoting *Strickland*, 466 U.S. at 687).

probability that but for counsel’s unprofessional errors, the result of the proceeding would have been different.”⁶⁹ “A ‘reasonable probability is a probability sufficient to undermine confidence in the outcome [and] requires a substantial, not just conceivable, likelihood of a different result.’”⁷⁰ A movant who pled guilty must show there is a reasonable probability that, but for counsel’s alleged errors, he would have insisted on proceeding to trial.⁷¹ Courts may dispose of an IAC claim based on the absence of prejudice alone.⁷²

1. Trial counsel’s conduct was objectively reasonable and no prejudice was established.

Burton claims that “during the pre-trial stages [trial counsel] failed to properly represent [him].”⁷³ But Burton does not actually identify what conduct his counsel exhibited that constituted ineffective assistance of counsel. Burton’s claim is conclusory, unsubstantiated, and fails to meet either of the prongs under *Strickland* necessary to establish IAC.

Burton does not satisfy the first prong of *Strickland*—that trial counsel’s conduct fell below an *objective* standard of reasonableness. To the extent Burton’s

⁶⁹ *Id.* (quoting *Strickland*, 466 U.S. at 694).

⁷⁰ *Id.* (citing *Cooke v. State*, 338 A.3d 418, 455-56 (Del. 2025) (quoting *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011)) (internal quotation marks omitted). See also *Starling v. State*, 130 A.3d 316, 325 (Del. 2015).

⁷¹ *Kellam* 341 A.3d at 490

⁷² *Id.*

⁷³ PCR Mot. at 3.

claim is that trial counsel failed to challenge the validity of the motel room search and his subsequent arrest, the record reflects Burton's trial counsel filed a motion to suppress the evidence from the search and his arrest.⁷⁴ But, before the suppression issue was decided, Burton knowingly, intelligently, and voluntarily pled guilty, voluntarily waiving his right to challenge errors or defects preceding the entry of the plea.⁷⁵ As such, this Court cannot conclude Burton's trial counsel's conduct was objectively unreasonable.

Burton also fails to establish the second prong of *Strickland*—that there is a reasonable probability that, but for counsel's alleged error, the outcome would have been different.⁷⁶ Burton does not argue or present any evidence that, but for an error by his counsel, he would have taken the case to trial. Concrete allegations and substantiation of actual prejudice is necessary to avoid summary dismissal.⁷⁷ Here, there are no such concrete allegations, and the absence of prejudice is fatal to Burton's IAC claim.⁷⁸

2. Appellate counsel's conduct was objectively reasonable and no prejudice was established.

⁷⁴ Motion to Suppress.

⁷⁵ See Order on Appeal at 4; see also *Terrero-Ovalles*, 2019 WL 2355019 at *2 (citing *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003)).

⁷⁶ *Terrero-Ovalles*, 2019 WL 2355019 at *2.

⁷⁷ *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

⁷⁸ *Kellam* 341 A.3d at 490.

Burton next claims his appellate counsel “failed to properly represent” him on appeal.⁷⁹ In support of his claim, Burton asserts, “I had [appellate] issues to raise and he told me there was nothing he can do.”⁸⁰ That appellate counsel disagreed with the merits of Burton’s claims on appeal is not the barometer of the merits of an IAC claim. Rather, both prongs of *Strickland* must be met.

Under the first prong of *Strickland*, a mere allegation of IAC is insufficient to demonstrate cause.⁸¹ Here, the record reflects Burton’s appellate counsel carefully and completely reviewed the record and determined that there was no arguably appealable issue. And even so, appellate counsel graciously included with their brief and motion to withdraw as counsel, the issues Burton wanted to present to the Supreme Court on appeal. The Supreme Court agreed with appellate counsel that Burton’s appeal was “wholly without merit and devoid of any arguably appealable issue.”⁸² The Supreme Court also reviewed the conduct of Burton’s appellate counsel and found it satisfactory vis-à-vis Burton’s suppression claim.⁸³ This Court agrees and finds Burton fails to offer any evidence to overcome the presumption that appellate counsel’s conduct was objectively reasonable.

⁷⁹ PCR Mot. at 3.

⁸⁰ *Id.*

⁸¹ *Younger*, 580 A.2d at 556.

⁸² Order on Appeal at 4.

⁸³ *Id.*

Moreover, Burton failed to establish the second prong of *Strickland*—that there is a reasonable probability that, but for counsel’s alleged error, the outcome would have been different.⁸⁴ Again, by pleading guilty, Burton voluntarily waived his right to challenge conduct leading to the search and his arrest. And, given the Supreme Court’s agreement with appellate counsel that there were no arguably appealable issues, this Court finds it unlikely that Burton would have succeeded on appeal—if only appellate counsel had continued the representation.⁸⁵

In sum, Burton’s conclusory, unsubstantiated claims of IAC fail to overcome the presumption that counsels’ conduct was objectively reasonable and fail to present substantial evidence showing that he would have proceeded to trial, instead of pleading guilty, or that his appeal would have been successful but for his counsels’ ineffective assistance. Accordingly, Burton’s claims of IAC against both trial and appellate counsel fail under *Strickland* and are DENIED.

D. Appointment of Counsel

There is no right to court-appointed counsel in postconviction proceedings.⁸⁶ Rule 61(e)(3) authorizes this Court to appoint counsel for an indigent movant’s first timely postconviction motion upon entering a guilty plea *only* if the judge

⁸⁴ *Terrero-Ovalles*, 2019 WL 2355019, at *2.

⁸⁵ *Id.*

⁸⁶ *Cropper v. State*, 788 A.2d 130 (Del. 2001).

determines: (1) the conviction has been affirmed by final order upon direct appellate review or direct appellate review is unavailable; (2) the motion sets forth a substantial claim that the movant received IAC in relation to the plea of guilty; (3) granting the motion would result in vacatur of the judgement of conviction for which the movant is in custody; and (4) specific exceptional circumstances warrant the appointment of counsel.⁸⁷ Absent a showing of good cause, the Court is not required to appoint counsel when the issue is procedurally barred.⁸⁸

Here, Burton's claim that he was sentenced illegally is conclusory, unsubstantiated, meritless, and procedurally barred under Rule 61(i)(3). Burton's IAC claims against his trial and appellate counsel fail under both prongs of *Strickland*.⁸⁹ Under these circumstances, Burton fails to show good cause; therefore, his motion to appoint counsel⁹⁰ is DENIED.

V. CONCLUSION

Burton's claim he was sentenced illegally is conclusory, unsubstantiated, and barred under Rule 61(i)(3) because it was not asserted in a proceeding leading to judgement of conviction, and Burton failed to show cause for relief or prejudice from the resulting default. Likewise, both his IAC claims fail because they do not

⁸⁷ Rule 61(e)(3).

⁸⁸ *Price v. State*, 93 A.3d 654 (Del. 2014).

⁸⁹ Rule 61(i)(3); *see also Terrero-Ovalles*, 2019 WL 2355019.

⁹⁰ Mot. for Counsel.

overcome the presumption that counsels' conduct was objectively reasonable; nor does he establish that the result of the proceedings would have been different had his counsel acted differently. Burton's motion to appoint counsel fails for the same reasons.

Accordingly, Burton's PCR Motion and Motion to Appoint Counsel are **DENIED.**

IT IS SO ORDERED.

/s/ Kathleen M. Vavala
Judge Kathleen M. Vavala

cc: Original to Prothonotary
Matthew F. Hicks, DAG
Tyrell L. Burton