**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

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| STATE OF DELAWARE | ) | |
| | ) | |
| v. | ) | ID No. 2407015731 |
| | ) | |
| LINWOOD SAMPLE | ) | |

Submitted: September 16, 2025
Decided: December 15, 2025

*Upon Defendant Linwood Sample's Motion for Postconviction Relief*
**DENIED.**

**ORDER**

Nicoli Goncalves, Esquire, Deputy Attorney General, DEPARTMENT OF JUSTICE, 900 North King Street, Wilmington, Delaware 19801, Attorney for the State of Delaware.

Linwood Sample, SBI # 00649571, Howard R. Young Correctional Institution, 1301 E. 12th Street, Wilmington, De 19801, Defendant, *pro se.*

**WHARTON, J.**

This 15th day of December 2025, upon consideration of Defendant Linwood Sample's ("Sample) Motion for Post-conviction Relief ("Motion"),[1] the State's Response,[2] Sample's Reply,[3] and the record in this case, it appears to the Court that:

1. Sample was indicted by the Grand Jury in a five-count Indictment on the charges of Driving Under the Influence and four lesser motor vehicle charges. On December 23, 2024, Sample pled guilty to DUI as a seventh offence.[4] He was sentenced the same day to 10 years at Level V, suspended after 30 months for one year at Level III.[5]

2. Sample did not appeal his conviction and sentence to the Delaware Supreme Court. This Motion for Post Conviction Relief ("Motion") pursuant to Superior Court Criminal Rule 61, his first, was filed timely on July 24, 2025.[6] Sample requested the appointment of counsel, but that request was denied.[7]

3. Sample's Motion alleges that his counsel was ineffective when she failed to accurately calculate his previous DUI convictions.[8] He maintains that he had only five, not six, so that he should have been sentenced for a sixth offense, not

[1] D.I. 16.
[2] D.I. 22.
[3] D.I. 23.
[4] D.I. 11.
[5] D.I. 14, corrected by D.I. 15.
[6] D.I. 16.
[7] D.I. 21.
[8] D.I. 16.

a seventh.[9] It also alleges that his procedural due process rights under 21 *Del. C.* § 4177(d)(11) were violated when the Attorney General failed to file a motion to have him sentenced pursuant to an enhancement.[10]

4. Rule 61 is the exclusive remedy for those "in custody under a sentence of this court seeking to set aside the judgment of conviction…"[11] This Rule balances finality "against … the important role of the courts in preventing injustice."[12] Before addressing the merits of a defendant's motion for postconviction relief, the Court must first apply the procedural bars of Superior Court Criminal Rule 61(i).[13] If a procedural bar exists, then the Court will not consider the merits of the postconviction claim.[14] Under Delaware Superior Court Rules of Criminal Procedure, a motion for postconviction relief can be barred for time limitations, repetitive motions, procedural defaults, and former adjudications. A motion exceeds time limitations if it is filed more than one year after the conviction becomes final or if it asserts a newly recognized, retroactively applied right more than one year after it was first recognized.[15] A second or subsequent motion is repetitive and

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[9] *Id.*
[10] *Id.*
[11] Super. Ct. Crim. R. 61(a)(1).
[12] *Zebroski v. State*, 12 A.3d 1115, 1120 (Del. 2010) (citation omitted).
[13] *Younger v. State,* 580 A.2d 552, 554 (Del. 1990).
[14] *Id.*
[15] Super. Ct. Crim. R. 61(i)(1).

therefore barred.[16] The Court considers a repetitive motion only if the movant was convicted at trial and the motion pleads with particularity either: (1) actual innocence;[17] or (2) the application of a newly recognized, retroactively applied rule of constitutional law rendering the conviction invalid.[18] Grounds for relief "not asserted in the proceedings leading to the judgment of conviction" are barred as procedurally defaulted unless the movant can show "cause for relief" and "prejudice from [the] violation."[19] Grounds for relief formerly adjudicated in the case, including "proceedings leading to the judgment of conviction, in an appeal, in a post-conviction proceeding, or in a federal habeas corpus hearing" are barred.[20] Additionally, "[t]his Court will not address claims for post-conviction relief that are conclusory and unsubstantiated."[21]

5. To successfully bring an ineffective assistance of counsel ("IAC") claim, a claimant must demonstrate: (1) that counsel's performance was deficient; and (2) that the deficiencies prejudiced the claimant by depriving him or her of a fair

[16] Super. Ct. Crim. R. 61(i)(2).
[17] Super. Ct. Crim. R. 61(d)(2)(i).
[18] Super. Ct. Crim. R. 61(d)(2)(ii).
[19] Super. Ct. Crim. R. 61(i)(3).
[20] Super. Ct. Crim. R. 61(i)(4).
[21] *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,* 580 A.2d at 556; *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).

trial with reliable results.[22] To prove counsel's deficiency, a defendant must show that counsel's representation fell below an objective standard of reasonableness.[23] Moreover, a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.[24] "[A] court must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."[25] A successful Sixth Amendment claim of IAC requires a showing "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[26] When addressing the prejudice prong of the IAC test in the context of a challenged guilty plea, an inmate must show "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."[27]

6. An inmate must satisfy the proof requirements of both prongs to succeed on an IAC claim. Failure to do so on either prong will doom the claim and the Court need not address the other.[28]

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[22] *Strickland v. Washington*, 466 U.S. 668, 688 (1984).
[23] *Id.* at 667-68.
[24] *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).
[25] *Strickland*, 446 U.S. at 689.
[26] *Id.* at 694.
[27] *Albury v. State,* 551 A.2d 53, 59 (Del. 1988) (citing *Hill v. Lockhart,* 474 U.S. 52, 58 (1985)); *Sartin v. State,* 2014 WL 5392047, at *2 (Del. Oct. 21, 2014); *State v. Hackett,* 2005 WL 30609076, at *3 (Del. Super. Ct. Nov. 15, 2005).
[28] *Strickland,* 466 U.S. at 697; *Ploof v. State,* 75 A.3d 811, 825 (Del. 2013) ("*Strickland* is a two-pronged test, and there is no need to examine whether an attorney performed deficiently if the deficiency did not prejudice the defendant.").

7. This Motion is timely and is Sample's first postconviction relief motion. None of the bars of Rule 61(i) apply. However, Sample's IAC claim fails on the prejudice prong because he has not shown "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." He has not even made that claim, much less established it as a reasonable probability. Moreover, the Court has difficulty believing that Sample was willing to plead guilty to the more serious seventh offense, but yet would not have pled guilty to the less serious sixth offense and insisted on going to trial.

8. Sample's procedural due process claim also fails. Sample's plea states that he entered a guilty plea to "Driving Under the Influence 7th Offense (Class C Felony)."[29] It also contains language stating he "admits he is subject to sentencing under 21 Del. C. 4177(d)(6) [sic] due to the following prior convictions: DUI (2018), DUI (2015), DUI (2013), DUI (2011), DUI (2008), DUI (1996)(PA)."[30] It appears the 1996 conviction was not in Pennsylvania, but rather in the Bronx Criminal Court in New York.[31] The Immediate Sentencing Form signed by Sample identifies three misdemeanor DUI convictions in 2011, 2008, and 1996 and three felony DUI

[29] D.I. 11.
[30] *Id.*
[31] State's Resp. at Ex. E, D.I. 22.

convictions in 2018, 2015 and 2013.[32] He was provided notice of these convictions by the State in its Notice of Enhanced Penalty Due to Prior Convictions.[33]

9. Sample argues that the 1996 conviction should not count as an enhancement because it was a first offense that "exceeds the 10 year threshold" in order for his 2009 conviction to be a second offense, and the State never used it as an enhancer before.[34] He does not challenge its existence in his Motion, but does take belated issue with it in his Reply, claiming the date of birth on the record of conviction differs from his by three days.[35]

10. None of these arguments is persuasive. While there is a "10 year threshold" for second offenses,[36] that "threshold" does not apply to convictions after the second.[37] For example, the enhanced penalties applicable to Sample are imposed "[f]or a seventh offense occurring any time after 6 prior offenses."[38] Further, the fact that the State apparently did not use the 1996 conviction to enhance his sentence before is of no legal significance. He was provided ample notice that it intended to do so this time and he agreed to the State doing so. Finally, Sample's eleventh hour

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[32] D.I. 11.
[33] State's Resp. at Ex. C, D.I. 22.
[34] Mot. for Postconviction Relief, D.I. 16.
[35] Def.'s Reply, D.I. 23. The record has a date of birth of "1/24/72." Sample's is January 21, 1972. *Id.*
[36] 21 *Del. C.* § 4177(d)(2).
[37] 21 Del. C. § 4177(d)(3)-(d)(7).
[38] 21 *Del. C.* § 4177(d)(7).

denial that the 1996 conviction is his is unpersuasive. He acknowledged he was convicted of DUI in 1996 in his plea agreement and the Immediate Sentencing Form and was provided notice that the State intended to use that conviction to enhance his sentence. Given Sample's relatively unusual name, and the closeness of the dates of birth, the difference between the two is more likely due to human error rather than different humans.

11. Finally, the Court concludes Sample waived any procedural challenge when he stipulated to his convictions and agreed to immediate sentencing.

**THEREFORE**, for the reasons set out above, Defendant Linwood Sample's Motion for Postconviction Relief is **DENIED**.

**IT IS SO ORDERED.**

*/s/ Ferris W. Wharton*
Ferris W. Wharton, J.