

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

STATE OF DELAWARE )  
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 )  
 v. ) I.D. No. 83005216DI  
 )  
 VINCENT ALLEN, )  
 )  
 Defendant. )  
 )

Submitted: January 18, 2002  
Decided: February 1, 2002

**ORDER**

Upon Defendant's Motion for Postconviction Relief.  
**SUMMARILY DISMISSED.**

This 1<sup>st</sup> day of February, 2002, upon consideration of the Defendant's Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 and the record in this case, it appears that:

(1) On March 27, 1984, a jury convicted Defendant, Vincent Allen, of Burglary Third Degree, four counts Theft Under \$500, and three counts Forgery Second Degree. On July 25, 1984, the Court granted the State's motion to declare Defendant a habitual offender. On August 10, 1984, the Court sentenced Defendant to a total of fifteen

years incarceration. On April 24, 1995, the Supreme Court issued its mandate affirming Defendant's conviction.

(2) Defendant has now filed a Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. Under established procedure, the Court must first determine whether Defendant has met the procedural requirements of Rule 61(i) before the Court may consider the merits of the postconviction relief claims.<sup>1</sup> The Court finds that Defendant's motion is procedurally barred under Rule 61(i)(1).

(3) Rule 61(i)(1) states that a motion for postconviction relief may not be filed more than three years after the judgment of conviction is final. As set forth above, Defendant's conviction became final on April 24, 1985, nearly seventeen years ago.

(4) The Court finds that Defendant has not shown that the procedural time bar is inapplicable under Rule 61(i)(5). Subsection (i)(5) provides an exception to the time bar set forth in subsection (i)(1) where there is a claim that the Court lacked jurisdiction or to "a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction." The exception is narrow "and has only been applied in limited circumstances, such as when the right relied upon has been recognized for the first time after the direct appeal."<sup>2</sup>

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<sup>1</sup> *Younger v. State*, 580 A.2d 552, 554 (Del.1990).

<sup>2</sup> *Id.* at 555.

(5) In support of his motion for postconviction relief, Defendant raises four grounds for relief. However, all of Defendant's grounds for relief basically raise the same argument. Defendant claims that he was denied effective assistance of counsel because his attorney failed to inform him that he had filed a motion to withdraw as counsel pursuant to Supreme Court Rule 26(c).

(6) A review of the Supreme Court docket detailing the history of Defendant's direct appeal shows that his attorney filed a notice of appeal on September 10, 1984 and a motion to withdraw pursuant to Rule 26(c) on March 4, 1985. The Superior Court filed its record and trial transcript with the Supreme Court on December 28, 1984. On April 8, 1984, the Supreme Court affirmed Defendant's conviction.<sup>3</sup>

(7) Defendant alleges that his attorney also failed to provide him with a copy of his appeal filed pursuant to Rule 26 and failed to inform Defendant of his right to supplement the appeal himself as provided under Rule 26(c). Defendant also claims that his attorney and the trial judge somehow deprived him of his trial transcripts for appeal. Defendant claims that his attorney's failure to inform him of the motion to withdraw and his rights pursuant to Rule 26(c) to supplement the appeal violated his constitutional rights to effective assistance of counsel and deprived him of his right to a fair trial.

(8) A criminal defendant who raises an allegation of ineffective assistance of counsel must show that the attorney's conduct did not meet reasonable professional

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<sup>3</sup> See *Allen v. State*, No. 250, 1984, Moore, J. (Apr. 8, 1984)(ORDER).

standards so that such conduct was prejudicial to the defendant.<sup>4</sup> A defendant must be able to show that "[t]here is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different."<sup>5</sup>

(9) The Court finds that it need not determine whether or not Defendant's allegations that his attorney failed to provide him with a copy of the motion to withdraw and failed to inform him that he could submit additional points for consideration on appeal were true. Defendant does not allege, and has failed to provide any evidence, that there were meritorious issues which could have been raised in his direct appeal or that his conviction would have been reversed by the Supreme Court if those issues had been raised. Therefore, even if the Court were to find that counsel's alleged conduct did not meet reasonable professional standards and that his inaction was so prejudicial to Defendant as to otherwise constitute a miscarriage of justice, Defendant has failed to satisfy the second requirement under *Strickland* to show a reasonable probability that, but for his attorney's unprofessional errors, the result of the proceedings would have been different

(10) As a result, the Court cannot find that Defendant has raised "a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction." Therefore, Defendant's Motion for Postconviction Relief is procedurally barred as untimely.

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<sup>4</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

<sup>5</sup> *Id.* at 669.

For the foregoing reasons, Defendant's Motion for Postconviction Relief is

**SUMMARILY DISMISSED.**

**IT IS SO ORDERED.**

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Carl Goldstein, Judge

oc: Prothonotary  
cc: Vincent Allen