

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

P.O. Box 746
COURTHOUSE
GEORGETOWN, DE 19947

February 6, 2004

Christopher J. Altoe
Sussex Correctional Institution
P.O. Box 500
Georgetown, DE 19947

RE: State of Delaware v. Christopher J. Altoe
Def. ID# 9910021140

Memorandum Opinion - Motion for Postconviction Relief

Dear Mr. Altoe:

This is my decision on your motion for postconviction relief. You were charged by Information on December 15, 1999 with Burglary in the Third Degree, Theft under \$1000.00 - Victim is 60 Years of Age or Greater, Conspiracy in the Second Degree, and Criminal Mischief under \$1000.00. You pled guilty on January 31, 2000 to Burglary in the Third Degree and were sentenced by Judge Richard F. Stokes to three years at supervision level V, suspended for six months at supervision level IV home confinement, followed by two years and nine months of declining levels of probation.

I found you in violation of your probation on July 11, 2003 and sentenced you to one year and 11 months at supervision level V, suspended for one year at supervision level III upon your successful completion of the short-term Key Program. You were, at the time, in the Crest Program

because you had previously violated your probation. The basis of your most recent violation of probation was your failure to timely submit a urine sample. You did not file an appeal with the Supreme Court. You filed this motion for postconviction relief on November 20, 2003. This is your first motion for postconviction relief and it was filed in a timely manner. Therefore, your motion is not barred by Superior Court Criminal Rule 61(i)(2).

You have raised three grounds in support of your motion for postconviction relief. Specifically, you allege that (1) you were subject to double jeopardy because you had previously been sanctioned for having “unaccounted for” time; (2) your due process rights were violated because when you finally did give a urine screen, the results were “clean”; and (3) your due process rights were violated when the Court allegedly denied you the right to subpoena a witness. However, you did not raise any of these claims at the time of your hearing. Therefore, these claims are procedurally barred pursuant to Rule 61(i)(3) unless you are able to show cause from relief from the procedural bar and prejudice as a result of any violation of your rights.¹ However, “this bar to relief does not apply 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.”² You have shown no exception to these procedural bars. Consequently, your motion for postconviction relief is denied on procedural grounds. Moreover, even if I were to consider the merits of your claims, I would deny them for the following reasons.

¹*Outten v. State*, 720 A.2d 547, 556 (Del. 1998).

²*Outten*, 720 A.2d at 556, *citing* Super. Ct. Crim. R. 61(i)(5).

DISCUSSION

I. Double Jeopardy

You allege that you were subject to double jeopardy because you had previously been sanctioned for having “unaccounted for” time. You claim that while you were in Court, Work Release Probation Officer Dennis Higgins was not focused on your failure to timely give a urine screen, but rather on the periods of “unaccounted for” time that you had while in the Crest program. Although it may be true that Mr. Higgins placed emphasis on your “unaccounted for” time, there was no double jeopardy here. I knew that you had already been punished for the “unaccounted for” time by serving time at the Violation of Probation Center. Moreover, you were only violated for failing to timely give a urine screen. I did not violate you for the “unaccounted for” time while you were in the Crest program. Therefore, this claim is without merit.

II. Urine Screen Results

You allege that your due process rights were violated because when you ultimately did submit a urine screen, the results were “clean.” However, while this is true, the Crest program rules require that you must give a urine screen within a certain time period. You did not and were properly violated for your failure to comply. The fact that your urine screen was “clean” does not save you. Consequently, there has been no due process violation.

III. Denial of the Right to Subpoena a Witness

You allege that I denied you the right to subpoena a witness. This is factually incorrect. I did not prohibit you from subpoenaing anyone. You were represented by counsel. If you had wanted to subpoena a witness, your counsel could have done it for you. Therefore, there has been no violation of your due process rights.

CONCLUSION

Your motion for postconviction relief is denied for the foregoing reasons.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

ESB:tl

cc: Prothonotary's Office
Department of Justice