

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

)

ID No. 0003008658

)

v.

)

Philip Costango

)

)

)

Date Submitted: December 4, 2001

Date Decided: January 2, 2002

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

ORDER

This __th day of January, 2002, upon consideration of Movant Philip Costango's Motion for Postconviction Relief, it appears to the Court that:

1. On November 8, 2001, as a result of a violation of probation, Movant was sentenced to 18 months imprisonment at Level V, followed by 3 months Level IV VOP Center.

2. On December 4, 2001, Movant filed a *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. Movant asserts as grounds for relief (a) pending of investigation by internal affairs at the time of sentencing, (b) the sentence being outside of violation guidelines, and (c) an unfulfilled plea agreement resulting in a sentence that exceeded guidelines of agreement.

3. Delaware Superior Court Criminal Rule 61(b)(2) requires that the motion for postconviction relief "specify all the grounds for relief which are available to the movant and of which the movant has or, by the exercise of reasonable diligence, should have knowledge, and shall set forth in summary form the facts supporting each of the grounds..."¹

¹ Del. Super. Ct. Crim. R. 61(b)(2).

4. Rule 61(d)(4) allows the Court to summarily dismiss a motion for postconviction relief “if it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief...”²

5. Rule 61 was intended to provide to prisoners the right to attack collaterally their sentences in the court where they were originally tried.³ The purpose is to afford a remedy in lieu of habeas corpus and coram nobis to the defendant who claims that his conviction was obtained or his sentence imposed in violation of his constitutional guaranties.⁴

6. Movant is not collaterally attacking his judgment. Movant appears to be seeking a modification of his sentence to which a motion for postconviction relief is not the appropriate vehicle. Therefore, the Motion is summarily dismissed.

IT IS SO ORDERED.

The Honorable Richard S. Gebelein

Orig: Prothonotary
cc: Mr. Philip Costango -GH

² Del. Super. Ct. Crim. R. 61(d)(4).

³ *Curran v. Wooley*, Del. Super., 101 A.2d 303 (1953), *aff'd*, Del. Supr., 104 A.2d 771 (1954).

⁴ *Johnson v. State*, Del. Supr., 280 A.2d 712 (1971).