SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. Scott Bradley
Judge

SUSSEX COUNTY COURTHOUSE
THE CIRCLE
P.O. BOX 746
GEORGETOWN, DE 19947
(302) 856-5257

February 6, 2004

Lester J. Hickman

Delaware Correctional Center
P.O. Box 500
Smyrna, DE 19977

RE: State of Delaware v. Lester Hickman
Def. ID# 0104000979
Memorandum Opinion - Motion for Postconviction Relief

Dear Mr. Hickman:

This is my decision on your motion for postconviction relief. You were charged by Information on May 2, 2001 with Trafficking in Cocaine, Possession with Intent to Deliver Cocaine, Maintaining a Dwelling for Keeping Controlled Substances, Conspiracy in the Second Degree, Possession of Cocaine, and Possession of Drug Paraphernalia. After a three day jury trial, you were convicted on August 30, 2001 of Trafficking in Cocaine, Possession with Intent to Deliver Cocaine, Maintaining a Dwelling for Keeping Controlled Substances, Possession of Drug Paraphernalia, and Possession of Cocaine. Following your convictions, the State filed a motion to have you sentenced as an habitual offender, pursuant to 11 *Del. C.* § 4214(b). I declared you an habitual offender on November 2, 2001 and sentenced you to two life sentences plus seven years at supervision Level V. You filed a timely appeal with the Supreme Court on November 28, 2001. The Supreme Court on

June 7, 2002 affirmed your convictions for Trafficking in Cocaine, Possession with Intent to Deliver Cocaine, and Possession of Drug Paraphernalia, but vacated your conviction for Possession of Cocaine.[1] You filed your motion for postconviction relief on December 1, 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)(1).

You allege five grounds in support of your motion for postconviction relief. Specifically, you allege that (1) the government's use of evidence seized from your residence was in violation of your Fourth Amendment rights;[2] (2) the State did not have sufficient probable cause for a search warrant; (3) the evidence seized from your residence and property during the execution of the search warrant was inadmissible; (4) the government violated your Fourth Amendment rights pursuant to the "knock and announce" rule; and, (5) the Trial Court erred in sentencing you under Delaware's Habitual Offender Act, pursuant to 11 *Del. C.* § 4214. All of these claims were either raised on appeal, or could have been raised on appeal, and are therefore procedurally barred.[3] Nevertheless, I will address them briefly.

I. Fourth Amendment Violation

You allege that the government's use of evidence seized from your residence was in violation of your Fourth Amendment rights. Although you provide relevant case law pertaining to the issue

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[1] *Hickman v. State*, Del. Supr., No. 584, 2001, Steele, J. (June 26, 2002). The Supreme Court Order does not mention the conviction for Maintaining a Dwelling for Keeping a Controlled Substance. However, that conviction was also affirmed.

[2] Although you allege that your Fourth Amendment rights under the Equal Protection Clause were violated, the Equal Protection Clause, which is implied in the Fifth Amendment of the Constitution of the United States, is inapplicable in this situation.

[3] Super. Ct. Cr. R. 61(i)(4); Super. Ct. Cr. R. 61(i)(3).

of sufficient probable cause to issue a search warrant, you fail to specifically set forth any facts related to the alleged violation. I assume that you are attempting to claim that the police officers executed an invalid search warrant because the warrant application lacked probable cause. However, you have failed to satisfy the requirements of Rule 61(i)(2), which requires that you "set forth in summary form the facts supporting each of the grounds thus specified."[4] Furthermore, this issue was raised prior to your conviction and it was denied. Therefore, this claim is procedurally barred as you have failed to show that reconsideration of this claim is warranted in the interest of justice.[5]

II. Lack of Probable Cause

You allege that the State did not establish probable cause to ensure that the information obtained was sufficient for a search warrant. This argument is similar to your first argument. It is also procedurally barred.[6] As such, I will not consider it now.

III. Illegal Evidence

You allege that the evidence seized from your residence was inadmissible. More specifically, you contend that the evidence seized was not covered by the authority of the search warrant because it was not within the four corners of the search warrant. You made this same argument prior to your conviction and it was denied. I do not agree with your contention that the evidence seized was not covered by the search warrant. I determined that there was sufficient probable cause for a search warrant. Further, police officers witnessed you outside your house with what appeared to be, and

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[4]Super. Ct. Cr. R. 61(i)(2).

[5]Super. Ct. Cr. R. 61(i)(4), which provides that "[a]ny ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal...is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice."

[6]Super. Ct. Cr. R. 61(i)(4).

was later determined to be, contraband. If you disagreed with my determination, you should have included this argument in your appeal to the Supreme Court. Since this claim was formerly adjudicated prior to your conviction and reconsideration of this claim is not warranted in the interest of justice, it is barred.[7]

IV. Knock and Announce

You allege that your constitutional rights pursuant to the "knock and announce" rule were violated by the police officers executing the warrant to search your residence. This claim is barred by Superior Court Criminal Rule 61(i)(4) because you raised this claim on appeal to the Delaware Supreme Court where the decision of the trial court as to this issue was affirmed.[8] Rule 61(i)(4) precludes consideration of this claim unless such consideration is warranted in the interest of justice.[9] Delaware Courts have defined the "interest of justice" exception very narrowly 'to require the movant to show that the trial Court lacked the authority to convict or punish [the movant].'[10] Before the Delaware Supreme Court, you alleged that the evidence seized, following an improper "knock and announce" by the police officers executing the warrant, should have been suppressed. The

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[7]Super. Ct. Cr. R. 61(i)(4).

[8]*Hickman v. State* at 3.

[9]Superior Court Criminal Rule 61(i)(4) provides the following:

> Former adjudication. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.

[10]*State v. Denston*, 2003 WL 22293651, at *3 (Del. Super. Ct.), *citing State v. Wright*, 653 A.2d 288, 298 (Del. Super. Ct.) (Citing *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990)).

Delaware Supreme Court found that the record was "devoid of any evidence that the police executing the warrant in question did not properly announce their presence...[and] a trial judge cannot err by failing to suppress evidence where the record lacks any evidence or suggestion that the State acted improperly...."[11] Although you are now claiming that the government violated your constitutional rights by failing to properly knock and announce, this claim also fails. The Delaware Supreme Court has already determined that there was no violation of the knock and announce rule.[12] Therefore, this claim is barred and I will not consider it now.

V. Habitual Offender Act

You allege that I erred when I sentenced you under the Habitual Offender Act. You have set forth two arguments in support of your position. One, you argue that the State failed to present sufficient evidence to establish that you were eligible for habitual offender status. You claim that the evidence did not support your classification as an habitual offender because the State failed to present the underlying indictment or information, as well as the text from the guilty plea. In support of your argument you cite *Morales v. State*, 696 A.2d 390 (Del. 1997). However, the Delaware Supreme Court in *Hall v. State*, 788 A.2d 118, 127 (Del. 2000), found that *Morales v. State*, 696 A.2d 390 (Del. 1997) "stands only for the proposition that the State must show a guilty plea offered as a predicate offense for habitual offender status beyond a reasonable doubt, not that it must necessarily do so with the text of that guilty plea." Based on the records attached to the State's motion, the State has met its burden.

Two, you argue that the second felony used by the State to substantiate your habitual offender

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[11] *Hickman* at 3.

[12] *Id.* at 3.

status is not a felony under Delaware law, but rather a Class A Misdemeanor. This is factually incorrect. The State set forth four prior felonies in support of its motion. Delivery of Cocaine and Manslaughter are enumerated felonies. Assault in the Second Degree is a Class D felony and Reckless Endangering in the First Degree is a Class E felony. 11 *Del. C.* § 4214(b) requires that "[a]ny person who has been 2 times convicted of a felony or an attempt to commit a felony hereinafter specifically named...and who shall thereafter be convicted of a subsequent felony hereinafter specifically named...is declared to be an habitual offender...." Therefore, you clearly have the requisite number and type of felonies to be declared an habitual offender.

CONCLUSION

Your motion for postconviction relief is denied for the reasons stated herein.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

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cc: Prothonotary's Office