

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,

Plaintiff,

V.

Cr. ID. No. 0804036086

JEFFREY P. KRAHN,

Defendant.

Submitted: August 31, 2010

Decided: September 13, 2010

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE DENIED.**

James Kriner, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Jeffrey Krahn, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se*.

PARKER, Commissioner

This 13th day of September, 2010, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. On February 4, 2009, Defendant Jeffrey Krahn pled guilty to Assault in the First Degree and Reckless Endangering First Degree. The remaining charges, two counts of possession of a deadly weapon during the commission of a felony, were dismissed. On May 8, 2009, Defendant was sentenced to twenty-five years at Level V suspended after seven years for the Assault in the First Degree, and for five years at Level V suspended after one year for the Reckless Endangering First Degree, followed by decreasing levels of work release and probation.

2. Defendant Krahn did not file a direct appeal from his guilty plea, his May 8, 2009 sentencing, nor from anything leading up to them.

3. The facts giving rise to this action reveal that on April 2, 2008, Probation Officers Scott Meixell and Christopher R. Albence were taking their dinner break at Seasons Pizza on Route 13 in New Castle, Delaware. Defendant Jeffrey Krahn entered the restaurant with a female (who is now his wife). Officer Albence was Defendant Krahn's probation officer. Officer Albence recognized Defendant Krahn and was aware that Defendant was wanted as an absconder from probation.¹

4. Defendant Krahn sat down at a booth in the restaurant. After making eye contact with Officer Albence, Defendant Krahn abruptly got up and left the restaurant. The probation officers followed Defendant Krahn to the parking lot where they found him entering a Honda pick up truck. Both probation officers wore clearly marked clothing

¹ May 8, 2009 Sentencing Transcript, pgs. 8-10.

that identified them as probation officers, and their badges and handguns were drawn when they approached the vehicle.²

5. Officer Meixell approached the driver side door and Officer Albence was at the rear of the vehicle on his way towards the passenger door, when Defendant placed the vehicle in reverse and the vehicle backed up towards Officer Albence. Officer Meixell began to fire his weapon at the vehicle because he believed his partner behind the vehicle was in danger. An independent witness who was in the parking lot that day also thought that Officer Albence had been run over.³

6. Officer Meixell wound up in front of the vehicle when Defendant placed the vehicle in drive, placed his foot on the accelerator and began driving at Officer Meixell. Officer Meixell was struck by Defendant's vehicle and thrown to the ground. Officer Meixell sustained a serious head laceration along with neck and back injuries.⁴

7. Defendant fled the scene and went to Las Vegas, Nevada. He was arrested by U.S. Marshals and extradited back to Delaware.

8. There was a surveillance video that showed Defendant sitting down at the booth and then abruptly getting up and leaving the restaurant.⁵ There was also an independent witness who corroborated the State's version of the events in the parking lot.⁶

9. Defendant contends that he believed the probation officers were strangers and were trying to rob him. Defendant also believes that the probation officers behaved unreasonably themselves.⁷

² May 8, 2009 Sentencing Transcript, pgs. 9-10.

³ May 8, 2009 Sentencing Transcript, pgs. 9-11.

⁴ May 8, 2009 Sentencing Transcript, pgs. 10-11.

⁵ May 8, 2009 Sentencing Transcript, pgs. 9-10.

⁶ May 8, 2009 Sentencing Transcript, pgs. 10-11.

⁷ January 21, 2009 Office Conference Transcript, pg. 4-5.

10. Defendant was indicted by the New Castle County Grand Jury on June 23, 2008. He was charged with Assault First Degree, Reckless Endangering First Degree and two counts of Possession of a Deadly Weapon During the Commission of a Felony. Trial was originally scheduled for January 21, 2009; however, after signing the Plea Agreement and Truth in Sentencing Guilty Plea Form, Defendant became disorderly and was removed from the court by the Department of Corrections officers.

11. Following a decision to enter a plea, and after consultation with his wife, Defendant became emotionally upset and involved with an altercation with the police custodian guard. The court recognized that Defendant, given his emotional upheaval, was not in a state of mind to enter a plea at that time. Also, given the security concerns for Defendant's counsel, who would be the closest individual physically to him, next to the guards, caused the court to be reluctant to proceed with the plea.⁸

12. Defendant pled guilty to Assault First Degree and Reckless Endangering First Degree on February 4, 2009. The court conducted the plea colloquy with the Defendant and accepted the plea on that date. The Court ordered a presentence investigation and Defendant was ultimately sentenced to a total of eight years in prison followed by a period of probation.

13. By letter dated August 20, 2009, Defendant Krahn sought a reduction/modification of his sentence, which was denied by the Superior Court by Order dated November 20, 2009.⁹

14. On September 21, 2009, Defendant filed this motion for postconviction relief. Defendant essentially raises three grounds as the basis for the subject motion. Defendant

⁸ January 21, 2009 Office Conference Transcript, pg. 11-13.

⁹ Superior Court Docket No. 37.

raises the following: (1) ineffective assistance of counsel; 2) malicious prosecution/prosecutorial misconduct; and (3) that Defendant's plea was not entered into intelligently, knowingly and voluntarily. As a result of these alleged deficiencies, Defendant seeks to have his guilty plea vacated.

15. Prior to addressing the substantive merits of any claim for postconviction relief, the Court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61.¹⁰ If a procedural bar exists, then the claim is barred and the Court should not consider the merits of the postconviction claim.¹¹

16. With the exception of Defendant's ineffective assistance of counsel claims, Defendant's claims are barred by Rules 61(i)(2) and (3), for failing to raise the claims in a prior postconviction proceeding. Defendant was required to present the claims that he raises in the subject motion, with the exception of his ineffective assistance of counsel claims, at the time of his plea, the time of sentencing or on direct appeal. Having failed to do so, those claims are now barred pursuant to Rule 61(i)(2) and Rule 61(i)(3).

17. Even if Defendant's claims are not procedurally barred, they are without merit.

DEFENDANT'S PLEA WAS KNOWINGLY AND VOLUNTARILY ENTERED

18. Turning first to Defendant's claim that his guilty plea was not knowingly and voluntarily entered, the record reflects to the contrary. Defendant's claim of an involuntary guilty plea is belied by the transcript of his guilty plea hearing.

19. Indeed, at the February 4, 2009 guilty plea hearing, the Superior Court engaged in a thorough discussion with Defendant regarding his decision to plead guilty. The transcript reflects that Defendant stated that he understood the charges to which he was

¹⁰ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹¹ *Id.*

pleading guilty, that he was pleading guilty to the charges because he believed it was in his best interests to do so, that he was aware of the possible sentences, that he understood the consequences of his decision to plead guilty, that he understood the guilty plea form and plea agreement, that he had discussed the plea and its consequences with his counsel, that he was satisfied with his counsel's representation, and that his plea was entered voluntarily. Moreover, Defendant apologized to his victims for his actions.¹²

20. Defendant signed a Truth-In Sentencing Guilty Plea Form prior to entering his guilty plea in which he also stated that he had not been threatened or forced to enter the plea, that he was satisfied with his attorney's representation, that his attorney fully advised him of his rights, that he freely and voluntarily decided to plead guilty, and that all of his answers were truthful.¹³

21. In the absence of clear and convincing evidence to the contrary, Defendant is bound by the representations he made during his plea colloquy.¹⁴ Defendant has not presented any clear, contrary evidence to call into question his prior testimony at the plea colloquy or answers on the Truth-In Sentencing form into question. As confirmed by the plea colloquy and the Truth-In Sentencing Guilty Plea Form, Defendant entered his plea knowingly, intelligently and voluntarily.

DEFENDANT'S CLAIMS PRIOR TO ENTRY OF PLEA WERE WAIVED

22. Consequently, Defendant's contentions in his Rule 61 motion of "coercion, duress, deception and threats", is unsupported by the record. Defendant's contentions that his plea was not entered voluntarily, or was the result of prosecutorial bullying, or bullying by his counsel are without merit. As previously discussed, the record before the

¹² February 4, 2009 Plea Colloquy Transcript

¹³ Truth-In Sentencing Guilty Plea Form dated January 21, 2009.

¹⁴ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

court, including Defendant's own statements, undermine completely these claims in his postconviction motion.

23. Having concluded that Defendant's plea was entered voluntarily, intelligently, and knowingly, Defendant waived his right to challenge any alleged errors or defects occurring prior to the entry of his plea, even those of constitutional proportions.¹⁵ Specifically, Defendant waived his right to claim that he could not be legally or factually charged for committing the crimes that he plead to, that he was factually innocent, or that he did not commit the crimes that he plead to. Indeed, Defendant waived all other alleged errors or defects which occurred prior to the entry of his plea. All of Defendant's claims that he seeks to raise in his postconviction motion regarding defects, errors, misconduct and deficiencies prior to the entry of the plea, were waived when Defendant knowingly, freely and intelligently entered his plea.

DEFENDANT'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS

24. Turning to Defendant's ineffective assistance of counsel claims, Defendant raises various contentions including: that he was misled by counsel as to the strength of his case; that counsel rather than Defendant completed the Truth-In Sentencing Guilty Plea form; that he was coerced/bullied into accepting the plea agreement; that he was not informed the State would be recommending open sentencing; and that counsel failed to properly investigate/prepare the case. After filing his Rule 61 motion with supporting memorandum of law, Defendant supplemented his Rule 61 motion to add an additional contention that his counsel should have raised his legal competency during the court proceedings.

¹⁵ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Mojica v. State*, 2009 WL 2426675 (Del. 2009); *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2004).

25. To prevail on an ineffective assistance of counsel claim, the defendant must show that his counsel's efforts "fell below an objective standard of reasonableness" and that, but for his counsel's alleged errors, there was a reasonable probability that Defendant would not have pled guilty, would have insisted on going to trial and the outcome would have been different.¹⁶ Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.¹⁷ There is a strong presumption that counsel's conduct fell within a wide range of reasonable professional assistance.¹⁸

26. Here, Defendant's ineffective assistance claims are undermined by the record and fail to satisfy *Strickland*. Defendant fails to state a legitimate ground for relief against his counsel.

27. Defendant contends that he was "misled" as to the strength of his case by his counsel. In defense counsel's Affidavit, counsel explains that his initial appraisal of the case was based on the facts as Defendant related them, and that after evaluating the State's evidence, he realized the initial appraisal was too optimistic. Upon realizing that that his initial appraisal was too optimistic, defense counsel corrected his initial misimpressions. Defense counsel advised Defendant that he needed to reevaluate his position, long before the plea was entered.¹⁹ Defense counsel sought to correct any misimpressions upon realizing that the evidence was different from his initial understanding, and corrected those misimpressions long before Defendant had to make

¹⁶ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

¹⁷ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

¹⁸ *Albury v. State*, 551 A.2d 53, 59 (Del. 1988); *Salih v. State*, 2008 WL 4762323, at *1 (Del. 2008).

¹⁹ Trial Counsel's Affidavit in response to Rule 61 Motion; August 19, 2009 letter to Defendant Krahn attached to Affidavit

the decision whether or not to accept the plea. Counsel's conduct does not appear to be deficient in any regard nor has Defendant established actual prejudice as a result thereof.

28. Defendant contends that defense counsel was ineffective because counsel, rather than the defendant himself, checked off the appropriate responses on the Truth-In Sentencing Guilty Plea Form. Defendant further contends that defense counsel forged the Defendant's signature on the form. Defense counsel, in his Affidavit, denies that he forged the form.²⁰ Moreover, the Defendant's signature on the form appears to match his signature on all the other documents he submitted in connection with his Rule 61 motion. More significantly, during the plea colloquy, defense counsel represented that he reviewed the form with Defendant.²¹ Most significantly, during the plea colloquy, Defendant represented that he understood the rights that were stated on the form and that he understood that he was giving up those rights.²² Defendant has not established that defense counsel's conduct was deficient in this regard nor that he suffered any prejudice as a result thereof.

29. As to Defendant's contention that he was coerced/bullied into accepting the plea, this contention has already been discussed above. Having already concluded that Defendant's plea was entered into freely, voluntarily and intelligently, Defendant's contention that he was somehow coerced/bullied into accepting the plea is without merit.

30. At Defendant's plea colloquy, defense counsel referenced many communications and conversations he had with Defendant discussing the case, Defendant's course of proceeding, the plea, the charges, and the sentence. Defense counsel represented, on the record, that based on his conversations with Defendant, based on the review of the Truth-

²⁰ Trial Counsel's Affidavit in response to Rule 61 Motion.

²¹ February 4, 2009 Plea Colloquy Transcript, pg. 3-4.

²² February 4, 2009 Plea Colloquy Transcript, pgs. 5-6.

In Sentencing Form with Defendant, and most particularly based on his conversation with Defendant that morning, that Defendant was offering his guilty pleas in a knowingly, intelligently and voluntarily manner. Defense counsel further represented that Defendant believed that the disposition of his case by offering his plea was in his best interests.²³

31. Defendant did not take exception to any representation made by defense counsel on the record. Instead, Defendant confirmed those representations made by defense counsel. As previously discussed, Defendant expressly represented under oath during his plea colloquy, and in his Truth-In Sentencing Guilty Plea Form, that nobody, not his attorney, the State, nor anyone else, threatened or forced him to enter his guilty plea. Defendant testified that he was voluntarily entering into his guilty plea because he believed it was in his best interests to do so. Defendant also expressly represented that he was satisfied with his counsel's representation. Defendant is bound by his statements.

32. It bears mention that both defense counsel and the prosecutor take great exception to Defendant's present claims that they somehow "consorted" to deceive, threaten and coerce him to enter the plea. Defense counsel advises that he provided his professional advice that it was in Defendant's best interests to accept the plea. Defense counsel explained the plea, arranged for more time for Defendant to consider the plea offer and arranged for Defendant to meet with family members to discuss it before making his decision.²⁴

33. The prosecutor vehemently denies threatening Defendant. The prosecutor does not recall ever even speaking to the Defendant and emphatically denies ever telling

²³ February 4, 2009 Plea Colloquy Transcript, pgs. 3-4.

²⁴ Trial Counsel's Affidavit in response to Rule 61 Motion.

Defendant that if he lost at trial, “I am going to hang you.”²⁵ The prosecutor insists he never said to Defendant, “I would sign the plea, eight years is better than 25 years in prison.”²⁶ As the prosecutor points out, he could not possibly have said that, because he had no way of knowing how many years Defendant would be sentenced at the time of the plea agreement, and therefore could not have known that the sentence would be eight years.²⁷

34. Defendant contends that his counsel was ineffective for failing to inform him that the State was recommending open sentencing. The Truth-in-Sentencing Guilty Plea Form correctly states the statutory penalties, the minimum mandatory penalties, and the T.I.S. guidelines for both of the charged offenses. The Plea Agreement²⁸, signed by Defendant, clearly states, “Open Sentencing”. Defendant has failed to provide any evidence that counsel incorrectly stated the penalties or guidelines or that the State was required to recommend a specific sentence. In fact, the record is to the contrary. Defendant represented during his plea colloquy that he was aware that he could be sentenced for up to 30 years in jail, and that nobody promised what his sentence would be.²⁹ Defendant’s ineffective assistance of counsel claim is without merit.

35. Defendant contends that his counsel was ineffective in his preparation of the case for trial. Defendant waived this claim, among others, at the time he knowingly, voluntarily and intelligently entered his guilty plea. Even if the claim was not waived, it is without merit. Defendant fails to state specifically what it is his counsel failed to

²⁵ See, State’s response to Defendant’s Rule 61 Motion, pg. 5, ftnt. 1.

²⁶ See, Defendant’s Memorandum in Support of Rule 61 Motion, at pg. 2; State’s response to Defendant’s Rule 61 Motion, pg. 5, ftnt. 1.

²⁷ State’s response to Defendant’s Rule 61 Motion, pg.5, ftnt. 1.

²⁸ Plea Agreement dated January 21, 2009

²⁹ February 4, 2009 Plea Colloquy, at pg. 3-6.

investigate. Defendant alleges merely that his counsel failed to explore witnesses and medical records.³⁰ Defendant fails to set forth specifically what his counsel was required to do that he did not do, whom specifically he was suppose to obtain a statement from, and how the alleged deficiencies resulted in prejudice to him. It is not sufficient to establish an ineffective assistance of counsel claim by merely contending that had counsel interviewed some unidentified person or persons, or done something more, Defendant would have been cleared of the charges. Defendant must come forward and assert specifically what should have been done that was not done and how specifically that prejudiced the defendant.

36. Conclusory and unsubstantiated allegations of unprofessional conduct are insufficient to support a motion for postconviction relief.³¹ Defendant failed to establish that his counsel was ineffective in his preparation of the case nor has he established how those alleged deficiencies would have altered the outcome. Defendant's contention is devoid of any specificity. Defendant has failed to make concrete allegations of actual prejudice and substantiate them.

37. Defendant supplemented his Rule 61 motion to add a contention that his counsel was ineffective for failing to raise his legal competency prior to the entry of his plea.

38. Defense counsel, in his supplemental affidavit, advises that he never raised Defendant's legal competency because at no time during the course of representation did he ever believe he had a good faith basis to do so.³²

³⁰ See, Defendant's Memorandum of Law in support of his Rule 61 motion, at pg. 15.

³¹ *Younger v. State*, 580 A.2d 552, 555 (Del. 1990); *State v. Brown*, 2004 WL 74506, *2 (Del.Super. 2004).

³² Defense counsel's Supplemental Affidavit dated August 31, 2010.

39. Defense counsel advises there was never any basis to question Defendant's ability to understand the nature of the proceedings against him; to question the ability of Defendant to consult with counsel rationally; or to question whether Defendant had a rational as well as factual understanding of the proceedings against him.³³ Consequently, defense counsel did not have a good faith basis to raise Defendant's legal competency.³⁴ Defense counsel having determined that there was not a good faith basis to challenge Defendant's legal competency cannot be deemed ineffective for failing to do so.

40. Defendant points to the docket entry of January 21, 2009, wherein it states, in part: "Defendant Incompetent to Stand Trial"³⁵ to support his assertion that his counsel should have raised his legal competency. The docket entry of January 21, 2009, in its entirety, reads:

TRIAL CALENDER-CONTINUED. DEFENSE
REQUEST. DEFENDANT INCOMPETENT TO
STAND TRIAL. PLACE DEFENDANT ON JUDGE
BRADY'S AM CASE REVIEW CALENDAR ON
1/26/09. IF DEFT. DOES NOT TAKE PLEA, TRIAL
WILL GO FORWARD ON 1/27/09.³⁶

41. A review of the transcript of the proceedings that occurred on January 21, 2009 reveals that trial was originally scheduled on that day. However, following Defendant's decision to enter a plea, and after consultation with his wife, Defendant became emotionally upset and involved with an altercation with the police custodian guard. The court recognized that Defendant, given his emotional upheaval, was not in a state of mind to enter at plea at that time. Also, given the security concerns for Defendant's counsel, who would be the closest individual physically to him, next to the guards, caused the

³³ Id.

³⁴ See, *Williams v. State*, 378 A.2d 117, 119-20 (Del. 1977); 11 Del. C. §404(a)

³⁵ Superior Court Docket No. 20.

³⁶ Id.

court to be reluctant to proceed with the plea.³⁷ The clerk, not the court, noted Defendant's competency as the basis for the continuance.

42. Thus, the clerk's notation appears to be at odds with the actual events that transpired and the actual reason for the continuance. It was Defendant's emotional upheaval and his altercation with the police custodian guard, that caused the court and defense counsel to question whether Defendant had the present state of mind to enter the plea on that date. There was never any issue or concern by either the court, or defense counsel, about Defendant's legal competence to participate in future court proceedings.³⁸

43. Defense counsel was well aware of Defendant's mental condition.³⁹ Indeed, the Court and the State were also well aware of Defendant's mental condition and treatment in light of the extremely detailed presentence investigation report which contained a detailed recitation of Defendant's mental treatment and diagnostic history. Defense counsel, the Court and the State, were all aware of Defendant's prior hospitalizations, prescription medications, and diagnostic history.⁴⁰

44. Defendant has a history of emotionally unstable behavior. He has been diagnosed with impulse control disorder, antisocial traits including oppositional defiant disorder, and alcohol and substance abuse.⁴¹ Defendant has a detailed history of poor control of aggression. Defendant's inability or unwillingness to control his anger was precisely the inability that led defense counsel to request not to go to trial on January 21, 2009.⁴²

³⁷ January 21, 2009 Office Conference Transcript, pgs. 11-13.

³⁸ Id.; Defense Counsel's Supplemental Affidavit of August 31, 2010.

³⁹ Defense Counsel's Supplemental Affidavit of August 31, 2010.

⁴⁰ See, for example, Sentencing Hearing of May 8, 2009, at pgs. 4-8, 14-16.

⁴¹ Sentencing Hearing of May 8, 2009, at pgs. 4-8, 14-16; See also, Presentence Investigation Report.

⁴² Defense Counsel's Supplemental Affidavit.

45. The plea colloquy demonstrates Defendant's competency to enter a guilty plea. The record is clear that the court conducted a careful and complete guilty plea colloquy prior to accepting the guilty plea. The plea colloquy reflects that Defendant fully understood the charges against him, what he was pleading too, and that it was in his best interests to accept the plea. Furthermore, Defendant admitted to have committed the offenses for which he was pleading guilty.⁴³

46. During the plea colloquy, Defendant affirmed his understanding of the proceedings and expressed his views on his conduct. Defendant demonstrated his competency to enter his guilty plea through his understanding of the proceedings throughout the plea colloquy. Indeed, at one point during the plea colloquy, Defendant required clarification from the court to ensure that he was not being asked to plead to something beyond the scope of the plea agreement.⁴⁴ Defendant advised the court that he had been a patient in a mental hospital sometime in 2000 or 2001, about 7-8 years prior to his plea.⁴⁵ The court personally observed Defendant's condition, demeanor and clearly found that Defendant had the capacity to enter a voluntary, intelligent and knowing plea.

47. It should also be noted that Defendant has filed a civil rights action in the federal court against, among others, the probation officers at issue in the subject case, alleging their excessive use of force as well as other claims.⁴⁶ In that action, Defendant requested the appointment of counsel on the grounds that "he has a learning disorder and is bipolar."⁴⁷ Defendant does not appear to contend in his federal action that he was legally incompetent to represent himself. The federal court, in denying Plaintiff's request for

⁴³ Plea Colloquy of February 4, 2009, at pgs. 7-8.

⁴⁴ *Id.*

⁴⁵ Plea Colloquy of February 4, 2009, at pg. 4-5.

⁴⁶ *Krahn v. Delaware, et al.*, 2010 WL 2573906 (D.Del. 2010).

⁴⁷ *Id.* at 3.

counsel at that time, held that Defendant's filings in that case demonstrate his ability to sufficiently articulate his claims and represent himself.⁴⁸

48. Despite Defendant's contention that his legal competency should have been at issue in this case, defense counsel never believed he had a good faith basis to raise the issue. Given the fact that Defendant appears to have understood the proceedings against him, consulted with his counsel rationally and had a rational as well as factual understanding of the proceedings against him, there does not appear to be any objective basis to question that decision.

49. Given the strength of the State's case, defense counsel concluded that accepting the plea offer was in Defendant's best interest.⁴⁹ Defense counsel's advice to take the plea, and not to go to trial, does not appear to be deficient in any regard. Defense counsel's representation of Defendant was reasonable and Defendant cannot establish that he would have received a lesser sentence if he proceeded to trial. Defendant has failed to satisfy either prong of the *Strickland* test, and therefore, his claims of ineffective assistance of counsel fail.

50. In this case, Defendant has failed to overcome any of the procedural bars by showing a "colorable claim that there was a miscarriage of justice" or that "reconsideration of the claim is warranted in the interest of justice." The "miscarriage of justice" exception is a "narrow one and has been applied only in limited circumstances."⁵⁰

The defendant bears the burden of proving that he has been deprived of a "substantial

⁴⁸ *Id.*

⁴⁹ Trial Counsel's Affidavit in response to Rule 61 Motion; August 19, 2009 letter to Defendant Krahn attached to Affidavit

⁵⁰ *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

constitutional right.”⁵¹ The Defendant has failed to provide any basis, and the record is devoid of, any evidence of manifest injustice. The Court does not find that the “interests of justice” require it to consider the otherwise procedurally barred claims for relief.⁵²

For all of the foregoing reasons, Defendant’s Motion for Postconviction Relief should be denied.

IT IS SO RECOMMENDED.

Commissioner Lynne M. Parker

cc: Prothonotary
Edmund M. Hillis, Esquire

⁵¹ *Id.*

⁵² *Id.*