

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

STATE OF DELAWARE)	
)	
v.)	ID: 0802011023
)	0801022013
RALPH VOLL,)	0711012988
)	
Defendant.)	

ORDER

1. The December 23, 2009 Order is **VACATED**.
2. On December 9, 2009, Defendant filed his first motion for postconviction relief. The motion attacks Defendant’s October 24, 2008 sentencing, alleging ineffective assistance of counsel then. The motion does not question Defendant’s September 4, 2009, guilty plea.
3. Under Superior Court Criminal Rule 61(d)(1),¹ the Prothonotary properly referred the motion to the judge who presided over Defendant’s guilty plea.
4. After preliminary review, it appears that the motion should be referred to the judge who sentenced Defendant. The motion attacks the sentencing,

¹See Super. Ct. Crim. R. 61(d)(1) (“The original motion shall be presented promptly to the judge who accepted a plea of guilty or nolo contendere or presided at trial in the proceedings leading to the judgment under attack.”).

not the plea. Defendant only alleges ineffective assistance at sentencing.

5. It would be problematic if a judge, other than the sentencing judge, were to review sentencing counsel's effectiveness. The motion here makes the point. At the motion's core is an exchange between Defendant's counsel and the sentencing judge. It makes no sense for another judge to attempt to apply *Strickland v. Washington*'s standards to that exchange, not when the sentencing judge is available. Who is better able to decide than the sentencing judge what prejudice, if any, is attributable to Defendant's counsel at Defendant's sentencing?

For the foregoing reasons, the Prothonotary **SHALL** refer the case promptly to the judge who sentenced Defendant.

IT IS SO ORDERED.

January 5, 2010

Date

/s/ Fred S. Silverman

Judge

oc: Prothonotary (Criminal)
Shawn Martyniak, Deputy Attorney General
Ralph Voll, Defendant