

Appendix

A

WILLIAM T. WINDSOR, Defendant Below, Appellant, v. STATE OF DELAWARE, Plaintiff Below, Appellee.
SUPREME COURT OF DELAWARE
 2019 Del. LEXIS 35
 No. 442, 2018
 January 9, 2019, Submitted
 January 23, 2019, Decided

Notice: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Editorial Information: Prior History

Court Below-Superior Court of the State of Delaware. Cr. ID Nos. 1212009736A, 1212009736B. State v. Windsor, 2018 Del. Super. LEXIS 305 (Del. Super. Ct., July 19, 2018)

Judges: Before STRINE, Chief Justice; VALIHURA and VAUGHN, Justices.

CASE SUMMARY Because appellant was not convicted after trial, but instead pleaded guilty to one charge and no contest to another, he could not proceed under the exceptions to repetitive motions in Del. Super. Ct. R. Crim. 61(d)(2) that he sought to invoke; by pleading guilty. By pleading guilty, appellant waived his right to present evidence in his own behalf.

OVERVIEW: HOLDINGS: [1]-Because appellant was not convicted after trial, but instead pleaded guilty to one charge and no contest to another, he could not proceed under the exceptions to repetitive motions in Del. Super. Ct. R. Crim. 61(d)(2) that he sought to invoke; by pleading guilty; [2]-By pleading guilty, appellant waived his right to present evidence in his own behalf; [3]-Appellant's contention that he should be permitted to withdraw his guilty plea because he did not know that the indictment had been amended and his argument that he was subjected to double jeopardy were raised and rejected in his prior postconviction proceedings; [4]-Thus, appellant's assertions were barred because they were formerly adjudicated.

OUTCOME: Order denying appellant's second motion for postconviction relief affirmed.

LexisNexis Headnotes

Criminal Law & Procedure > Postconviction Proceedings

Under Del. Super. Ct. R. Crim. P. 61, a second or subsequent motion for postconviction relief will be summarily dismissed, unless the movant was convicted after trial and pleads with particularity the existence of new evidence that creates a strong inference of actual innocence or a new rule of constitutional law that is retroactively applicable.

Opinion

Opinion by: Leo E. Strine, Jr.

Opinion

ORDER

After consideration of the appellant's opening brief, the State's motion to affirm, and the record on appeal,¹ it appears to the Court that:

(1) The appellant, William Windsor, appeals from the Superior Court's order denying his second motion for postconviction relief under Superior Court Criminal Rule 61. The State has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Windsor's opening brief that the appeal is without merit. We agree and affirm.

(2) On February 18, 2013, Windsor was charged in a 160-count indictment with various sex offenses committed over a period of years against two victims ("Victim 1" and "Victim 2"). At Windsor's request, the Superior Court severed the indictment into two cases, Case A and Case B. Case A consisted of 151 counts relating to Victim 1, and Case B consisted of nine counts relating to Victim 2.

(3) On the morning that jury selection was scheduled to begin, the State offered amended indictments reducing the number of counts in Case A from 151 to twelve and in Case B from nine to eight. Later that same day, Windsor pleaded guilty to one count of Rape in the Second Degree in Case A and pleaded no contest to one count of Continuous Sexual Abuse of a Child in Case B. In exchange for Windsor's plea, the State agreed to dismiss the rest of the indicted offenses in both cases.

(4) At sentencing on December 13, 2013, Windsor told the Superior Court that he wanted to file a motion to withdraw the guilty plea. The Superior Court refused to hear the motion because it was untimely and because Windsor was represented by counsel with whom Windsor had not discussed the motion. After finding several aggravating factors, the Superior Court sentenced Windsor to a total of fifty years of imprisonment at Level V, twenty-five years for each offense, suspended after a total of twenty-two years for decreasing levels of supervision.

(5) On direct appeal, Windsor's counsel filed a no-merit brief under Supreme Court Rule 26(c). Windsor submitted several issues that he wanted the Court to

consider, including that the 160-count indictment was multiplicitous and designed to coerce him to plead guilty, and that the Superior Court had erroneously refused to consider his motion to withdraw the guilty plea. This Court rejected Windsor's claims and affirmed the Superior Court's judgment.²

(6) In February 2015, Windsor filed a motion for postconviction relief under Rule 61 and requested the appointment of counsel. Windsor's postconviction motion reiterated the issues that he had raised on direct appeal and raised several additional issues, including that his guilty plea was involuntary because he did not have effective assistance of counsel. The Superior Court denied the motion, and this Court affirmed on appeal.³

(7) Windsor filed a second motion for postconviction relief on June 19, 2018, and the Superior Court denied the motion on July 19, 2018. The Superior Court held that the motion was procedurally barred by Superior Court Criminal Rule 61. Windsor now appeals to this Court.

(8) We affirm. Windsor has not overcome the procedural bars that are set forth in Rule 61.4 Under Rule 61, "a second or subsequent motion for postconviction relief will be summarily dismissed, unless the movant was convicted after trial and pleads with particularity the existence of new evidence that creates a strong inference of actual innocence or a new rule of constitutional law that is retroactively applicable."⁵

(9) Because Windsor was not convicted after trial, but instead pleaded guilty to one charge and no contest to another, he cannot proceed under the exceptions to repetitive motions in Rule 61(d)(2) that he seeks to invoke.⁶ By pleading guilty, Windsor waived his right to present evidence in his own behalf.⁷ Moreover, in the absence of clear and convincing evidence to the contrary, he is bound by the representations he made at his plea colloquy.⁸

(10) Windsor's contention that he should be permitted to withdraw his guilty plea because he did not know that the indictment had been amended and his argument that he was subjected to double jeopardy were raised and rejected in Windsor's prior postconviction proceedings.⁹ Thus, it is clear that Windsor is not raising a new rule of constitutional law, and his assertions are barred because they were formerly adjudicated.¹⁰

NOW, THEREFORE, IT IS ORDERED that the motion for leave to respond to the motion to affirm is DENIED. The motion to affirm is GRANTED, and the

judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Leo E. Strine, Jr.
Chief Justice

Footnotes

1

Windsor's motion for leave to respond to the motion to affirm is denied. Under Supreme Court Rule 25(a), no response to a motion to affirm is permitted unless requested by the Court. The Court did not request a response to the motion to affirm and finds no good cause to permit a response in this case.

2

Windsor v. State, 100 A.3d 1022, 2014 Del. LEXIS 390, 2014 WL 4264915 (Del. 2014).

3

Windsor v. State, 124 A.3d 1016, 2015 Del. LEXIS 465, 2015 WL 5679751 (Del. 2015).

4

See SUPER. CT. CRIM. R. 61(i)(1)-(4); SUPER. CT. CRIM. R. 61(d)(2).

5

Rowley v. State, 133 A.3d 202, 2016 WL 617451, at *2 (Del. 2016).

6

See SUPER. CT. CRIM. R. 61(d)(2)(i) ("A second or subsequent motion under this rule shall be summarily dismissed, unless the movant was *convicted after a trial* and the motion . . . pleads with particularity that new evidence exists that creates a strong inference that the movant is actually innocent . . .") (emphasis added). Because he is procedurally barred as a result of pleading guilty and no contest, we do not address whether the ambiguous hearsay affidavits that Windsor has submitted create a strong inference of actual innocence. The Superior Court found that they did not.

7

Smith v. State, 676 A.2d 907, 1996 Del. LEXIS 19, *3, 1996 WL 21050, at *2 (Del. 1996).

8

Id.; see also *Webb v. State*, 918 A.2d 339, 2006 Del. LEXIS 657, *4, 2006 WL 3613635, at *1 (Del. 2006).

9

Windsor, 2015 Del. LEXIS 465 at *4, 2015 WL 5679751, at *3-4.

10

SUPER. CT. CRIM. R. 61(i)(4).

Appendix

B

State of Delaware v. William Windsor
 SUPERIOR COURT OF DELAWARE, SUSSEX
 2018 Del. Super. LEXIS 305
 Case ID# 1212009736A; 1212009736B
 June 21, 2018, Submitted
 July 19, 2018, Decided

Notice: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Editorial Information: Subsequent History

Affirmed by, Motion denied by Windsor v. State, 2019 Del. LEXIS 35 (Del., Jan. 23, 2019)

Editorial Information: Prior History

Windsor v. State, 100 A.3d 1022, 2014 Del. LEXIS 390 (Del., Aug. 28, 2014)

Counsel William Windsor, James T. Vaughn
 Correctional Center, Smyrna, Delaware.

Judges: Richard F. Stokes, JUDGE.

Opinion

Opinion by: Richard F. Stokes

Opinion

Defendant William Windsor ("Defendant") has filed his second Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61").¹ For the reasons expressed below the motion is **DENIED**.

On September 9, 2013, Defendant pled guilty to Rape in the Second Degree and pled *nolo contendere* to Continuous Sexual Abuse of a Child.² On the day of sentencing, Defendant, without the participation of his attorney, moved to withdraw his pleas pursuant to Criminal Rule 32(d). The Court refused to hear Defendant's motion because it was not made through his attorney, it was not filed with notice to the State, and the evidence against Defendant was so overwhelming. Defendant was sentenced as follows: for Rape in the Second Degree, twenty-five years at Level Five, suspended after 20 years for decreasing levels of supervision; for Continuous Sexual Abuse of a Child, twenty-five years at Level Five, suspended after two years for two years of probation. Defendant appealed the Superior Court's denial of his motion to withdraw to the Delaware Supreme Court on January 7, 2014. On August 28, 2014, the Supreme Court affirmed the decision.³

On February 20, 2015, Defendant filed his first Postconviction Motion. On March 25, 2015, the Superior Court denied Defendant's Motion.⁴

On June 19, 2018, Defendant filed his second Motion

for Postconviction Relief. He claims that: (1) he is actually innocent of his crimes and that one witness has since admitted her allegations were false; (2) he was subjected to double jeopardy with respect to the Rape in the Second Degree charge because that charge initially stemmed from the B case, but he pled guilty to that crime as part of the A case; (3) his motion to withdraw his guilty plea under Rule 32(d) should have been heard despite being made without the knowledge of his attorney; and (4) he was inadequately represented during plea negotiations and that if his attorney had informed him that the Indictment had been amended to include only 12 charges, instead of the original 51, he would not have accepted the offer.

The first step in evaluating a motion under Rule 61 is to determine whether any of the procedural bars listed in Rule 61(i) will force the motion to be procedurally barred.⁵ Both Rule 61(i)(1) and (2) require this motion to be summarily dismissed. First, a motion for postconviction relief cannot be filed more than one year after the judgment is final.⁶ Given that Defendant's conviction was finalized nearly 4 years ago, his motion is time-barred. Additionally, any successive motion for postconviction relief is barred by Rule 61(i)(2) unless the Defendant has:

(i) [pled]...with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which [he] was convicted; or

(ii) [pled]...with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant's case and renders the conviction or death sentence invalid.⁷

Thus, in order to overcome the Rule 61(i)(2) bar, Defendant would have to show that either new evidence exists that creates a strong inference of actual innocence or that a new rule of constitutional law applied retroactively to his case. Defendant is unable to meet either criteria. The three affidavits included with Defendant's Motion are insufficient to create a strong inference that he is actually innocent of the crimes to which he pled guilty. Statements that one of the victims may have made to various individuals at some point in time after the conviction

do not persuade the Court that it is more likely than not that no reasonable juror would have found Defendant guilty of his crimes beyond a reasonable doubt.

Considering the foregoing, Defendant's Motion for Postconviction relief is DENIED. As Defendant's Motion for Postconviction relief is denied, Defendant's Motion for Appointment of Counsel and Motion to Proceed in *Forma Pauperis* are also DENIED.

IT IS SO ORDERED.

Very truly yours,
/s/ Richard F. Stokes
Richard F. Stokes

Footnotes

1

The applicable version of Rule 61 is that effective on June 4, 2014, as amended by an order of this Court dated March 23, 2017.

2

The Rape in the Second Degree charge related to Defendant's first victim (Case ID: 1212009736A) and the Continuous Sexual Abuse of a Child charge related to Defendants second victim (Case ID 1212009736B).

3

Windsor v. State, 100 A.3d 1022, 2014 Del. LEXIS 390, 2014 WL 4264915 (Del. 2014).

4

State v. Windsor, 2015 Del. Super. LEXIS 158, 2015 WL 1455602 (Del. Super. Ct. March 25, 2015), *aff'd*, 124 A.3d 1016, 2015 Del. LEXIS 465, 2015 WL 5679751 (Del. 2015).

5

Super. Ct. Crim. R. 61(i) provides:

(i) Bars to Relief. (1) *Time limitation*. A motion for postconviction relief may not be filed more than one year after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.

(2) *Successive motions*. (i) No second or subsequent motion is permitted under this Rule unless that second or subsequent motion satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule. (ii) Under paragraph (2) of subdivision (b) of this Rule, any first motion for relief

under this rule and that first motion's amendments shall be deemed to have set forth all grounds for relief available to the movant. That a court of any other sovereign has stayed proceedings in that court for purpose of allowing a movant the opportunity to file a second or subsequent motion under this rule shall not provide a basis to avoid summary dismissal under this rule unless that second or subsequent motion satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule.

(3) *Procedural default*. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows (A) Cause for relief from the procedural default and (B) Prejudice from violation of the movant's rights.

(4) *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.

(5) *Bars inapplicable*. The bars to relief in paragraphs (1), (2), (3), and (4) of this subdivision shall not apply either to a claim that the court lacked jurisdiction or to a claim that satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule.

6

See Rule 61(i)(1)

7

See Rule 61(i)(2); 61(d)(2)(i), (ii).

**Additional material
from this filing is
available in the
Clerk's Office.**