

STATE OF RHODE ISLAND AND PROVIDENC PLANTATIONS
SUPERIOR COURT KENT, SC.

(FILED: October 28, 2011)

DANNY BROWN :
 :
 v. : KM-2000-323
 : (K1-1993-0598)
 :
 STATE OF RHODE ISLAND :

DECISION

THUNBERG, J. This motion is before the Court for decision upon the State’s Motion to Dismiss, pursuant to R.I. Gen. Law § 10-9-1.8, the appellant’s “Motion to Be Heard on Post-Conviction Issues that were not Addressed on the Order” filed May 18, 2009.

Standard of Review

The applicable post-conviction relief statute, § 10-9.1-8, provides that

“[a]ll grounds for relief available to an applicant at the time he or she commences a proceeding under this chapter must be raised in his or her original, or a supplemental or amended, application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds that in the interests of justice the applicant should be permitted to assert such a ground for relief.” G.L. 1956 § 10-9.1-8.

Travel of the Case

Danny Brown (hereinafter “Brown”) was convicted, in 1994, by a jury of three counts of first degree sexual abuse and three counts of first degree child molestation. He was subsequently sentenced concurrently to forty years imprisonment, twenty years to serve and twenty years suspended without probation. In April of 2000, Brown filed an application for post-conviction relief, alleging, in pertinent part, ineffective assistance of trial counsel resulting in a deprivation of his constitutional right to a fair trial. In 2003, Brown’s court appointed Shatney¹ attorney filed a “no merit” memorandum indicating that “she did not believe [trial counsel’s] performance met the standard necessary to carry a successful claim of ineffective assistance of counsel.” Brown v. State, 964 A.2d 516, 523 (R.I. 2009).

Thereafter, Brown proceeded pro se before this Court, and he presented evidence in a series of hearings. This Court granted Brown’s petition on the basis of its opinion that trial counsel was, indeed, ineffective. The honorable Supreme Court, in the aforementioned case, thoroughly and comprehensively reviewed this Court’s decision, vacated the order granting Brown’s relief and reinstated the judgment of conviction. Brown, 964 A.2d at 526.

¹ See Shatney v. State, 755 A.2d 130 (R.I. 2000).

Brown then proceeded to file numerous motions and memoranda before this Court styled as “Motion to be Heard on Post-Conviction Issues that were not Addressed at the Original Hearing before the Honorable Justice Thunberg.” (Def.’s Mem., “Face Sheet” filed on June 9, 2010, at 1.) In the accompanying “memorandum,” appellant states as follows:

Under the Rhode Island State Statute 10-9.1-7, an Order is not final until “each [sic] issue presented is addressed. The Petitioner not knowing the law on this matter did not realize the complications that this would create to exhaust his constitutional issues at the State Level [sic]. He Can not [sic] argue the Prosecutorial Misconduct that was argued at the Post-Conviction. He can not [sic] argue that he was not allowed to cross-examine Pastor Janiak about Lewis Carpenter in which the Petitioner was also a witness against her that was not argued at the direct appeal [sic]. About not being allowed to cross-examine Janiak and Judith about when the Law enforcement authorities were contacted [sic]. Not addressed when trying to cross-examine Janiak about when or if Janiak knew if the Alleged victim sought counseling [sic]. And not addressed if the Statute of Limitations were Time Barred in this Case [sic].” (Def.’s Mem. at 1.)

The appellant also filed a “Motion to Amend Parole Violation,” alleging that “the Parole Board violated [his] U.S. Constitutional Amendments 1, 5, and 14, when denying parole because the Petitioner is challenging his illegal conviction in the court.” (Def.’s Memo., filed December 2, 2010, at 1). Brown’s original petition for post-conviction relief was assigned to this Court by then Presiding Justice Joseph F. Rodgers, Jr., on May 16, 2001.

Over the course of approximately ten and one-half years, the Court has developed an intricate familiarity with every pertinent aspect of Brown's trial, post-conviction relief proceedings, and all of the attendant issues raised by Brown. The Court discerns no novelty in the appellant's purported "newly-raised" issues. In addition to presenting a plethora of filings, Brown has been afforded a full and fair opportunity to present oral argument to the Court on said issues and, indeed, he has done so on several occasions. The Court concurs, unreservedly, with the State's assertion that these issues "[i]n truth * * * are simply re-arguments of old allegations or new arguments regarding issues that were clearly arguable in his original application on KM 00-323." (Pl.'s Mem. in Support of its Motion to Dismiss at 3.) Our Supreme Court has stated that § 10-9.1-8's "judgment on the merits in the first case not only is conclusive with regard to the issues that were actually determined but also precludes reconsideration of all other issues that might have been raised in the prior proceeding." Ramirez v. State, 933 A.2d 1110, 1112 (R.I. 2007) (citing Figueroa v. State, 897 A.2d 55, 56-57 (R.I. 2006) (quoting Carillo v. Moran, 463 A.2d 178, 182 (R.I. 1983))).

Conclusion

The factual, legal, and procedural unfolding of Brown's case over the past ten years, and this Court's cognizance of the same, provides a meaningful context

with which to evaluate Brown's present entreaty. A thorough review of the case's history, as well as a careful consideration of the instant controversy compels this Court to grant the State's Motion to Dismiss. Counsel for the State shall prepare an order in conformance with this decision.