

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case Nos.: 0412015931
	)	0503019561
BONNIE L. JENNINGS,	)	
	)	
Defendant.	)	

Submitted: March 7, 2007  
Decided: June 29, 2007

Samantha Lukoff, Esquire  
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Department of Justice  
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**Opinion**  
**On Defendant's Motion**  
**For Post-Conviction Relief**

Defendant brings this motion for post-conviction relief pursuant to Court of Common Pleas *Criminal Rule 61* to vacate pleas of guilty entered on August 3, 2005. The defendant entered a plea of guilty to Driving While Under the Influence of Alcohol in violation of *21 Del. C. § 4177*, Reckless Driving Alcohol Related, in violation of *21 Del. C. § 4175*, and Driving Vehicle While License is Suspended, in violation of *21 Del. C. § 2756(a)*. A suspended sentence was imposed for a period of

probation; therefore, defendant is subject to future custody and this motion is appropriate under the rule.

The facts which led to these proceedings indicate that on December 21, 2004, the defendant was arrested by the Delaware State Police while operating a vehicle southbound on Route 1. As a result of this arrest, she was charged with Resisting Arrest, *11 Del. C. § 1257*, Driving Without Insurance, *21 Del. C. § 2118(p)*, and Driving While Under the Influence of Alcohol, *21 Del. C. § 4177(a)*. She was scheduled to be arraigned in Justice of the Peace Court No. 11, on January 10, 2005. Prior to the arraignment, defendant transferred her case to the Court of Common Pleas and she filed a prior plea form in this Court on January 10, 2005, where she elected a non-jury trial.

On March 22, 2005, defendant was arrested on Route 1, and charged with Speeding (*21 Del. C. § 4169*), Driving While License Suspended (*21 Del. C. § 2756*), Following Too Closely (*21 Del. C. § 4123*), and Driving While Under the Influence of Alcohol (*21 Del. C. § 4177(a)*). She was arraigned in Justice of the Peace Court No. 11 on May 26, 2005 and transferred these charges to the Court of Common Pleas. Prior to that date, on April 22, 2005, Mr. Willard filed arraignment by written pleading pursuant to CCP Criminal Rule 10(B) in this Court.

Case review on the December 21, 2004 charges were scheduled for April 6, 2005, but continued to June 22, 2005, so defendant could consolidate with the March 22, 2005 charges transferred from the Justice of the Peace Court. By letter dated June 22, 2005, Attorney John W. Willard wrote to the Court requesting a rescheduling,

stating he had just been retained and defendant was under the assumption the case review was scheduled for June 23, 2005. The Court granted the request. On July 26, 2005, Mr. Willard filed with the Court copies of the discovery request he had served on the State. He also filed a motion to suppress.

At Case Review on August 3, 2005, the defendant entered pleas of guilty. From the December 21, 2004 arrest, she entered a plea of guilty to an amended charge of Reckless Driving Alcohol Related. From the March 22, 2005 arrest, she entered pleas of guilty to Driving While License Suspended and Driving While Under the Influence of Alcohol. Defendant was immediately sentenced following acceptance of the plea.

The Court sentenced defendant on the Reckless Driving Alcohol Related offense, to pay a fine of Two Hundred Dollars (\$200.00) and one (1) year at Level 1 probation. The condition of probation required defendant to complete a course of instruction or program of rehabilitation as required by *21 Del. C. § 4175(b)* within five (5) months, at defendant's expense. The defendant was sentenced for Driving While Under the Influence of Alcohol to pay cost, fine of Two Hundred Thirty Dollars (\$230.00), and a period of probation at Level 1 for one (1) year. The condition of probation required she be evaluated for substance abuse and complete a course of instruction and/or program of rehabilitation as required by *21 Del. C. § 4177(D)* within five (5) months.

The defendant failed to complete the programs as ordered under both probationary sentences. A violation of probation hearing was held on September 8,

2006. During that hearing, Court discharged defendant from the probation imposed for Reckless Driving Alcohol Related as “Unimproved. The defendant was found in violation of the probation imposed for Driving Under the Influence of Alcohol, for failing to complete the program. There was a new arrest, but because it was still pending, she was not found in violation on that allegation. For violation of probation, defendant was sentenced to pay the cost, 60 days at Level V, suspended for 1 year at Level III, and required to complete the program within six (6) months. According to a probation progress report, she completed the DUI program at Pathways on April 12, 2007.

Defendant, in these proceedings, moves to vacate the convictions and permit her to withdraw her pleas of guilty. She alleges ineffective counsel in that she was not adequately advised of her rights and the implications of her plea. She relies upon the colloquy between her prior counsel Mr. Willard and the Court regarding Mr. Willard’s request for a rescheduling. On August 3, 2005, Mr. Willard requested a rescheduling on the basis he was not familiar with the case because as he stated, “he had just gotten into the case.” The Court reminded him that a previous continuance request was granted on June 22, 2005 on his motion.

A hearing was held on defendant’s motion on March 9, 2007. Defendant did not call Mr. Willard as a witness, nor was an affidavit submitted. Defendant relies upon the colloquy between former counsel and the Court which was, in essence, a denial of a request for a second case review.

A motion to withdraw a guilty plea is governed by *Court of Common Pleas Criminal Rule 32(d)* and analyzed under *Criminal Rule 61*. Under *Rule 32(d)*, withdrawal of a guilty plea is permitted after sentencing only to correct manifest injustice. The burden of proving manifest injustice rests on the defendant. *Albury v. State*, Del. Supr. 551 A.2d 53 (1988).

Jennings argues her attorney was ineffective because her counsel was not prepared on the date the plea was entered. Secondly, she argues she was not informed of the serious consequences of having multiple DUI offenses in her criminal record. She therefore alleges that if she had been so advised, she may have opted for trial rather than a plea agreement in at least one of the two cases.

In order to prevail on her Sixth Amendment right to effective assistance of counsel, Jennings must show that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. Barlow*, 2002 WL 519909 (Del. Super.).

The facts indicate Mr. Willard had the cases consolidated so that he could handle them together. He filed a request for discovery from the State in a timely manner and filed a motion to suppress. The case was rescheduled for a second case review at his request based upon his need for further preparation and defendant's mistake regarding the date scheduled.

During the plea colloquy, Mr. Willard indicated he wanted the rescheduling so defendant could produce evidence of insurance and he wanted to speak to the

Prosecutor's supervisor. He also indicated he advised the defendant that she may be subject to a third offense if she was subsequently arrested for a DUI offense within five (5) years. He also stated he reviewed with defendant the constitutional rights she was giving up by pleading guilty.

The Court's colloquy with the defendant inquired if she read, understood, and signed the plea agreement. To these inquiries, she responded yes. She further stated she understood the rights she was giving up to a trial, and she admitted the offenses stated in the plea agreement.

The law requires the defendant to be informed at the time of the plea to the range of possible penalties she will receive if convicted of a subsequent offense. *Krewson v. State*, Del. Supr. 552 A.2d 840 (1988). Jennings was informed by Mr. Willard that she faced the possibility of felony charges if she was subsequently arrested for Driving While Under the Influence of Alcohol.

These facts indicate that the actions taken by Mr. Willard are those of a reasonable attorney in a criminal case. Based on these facts, I am unable to conclude his performance was so deficient that it fell below acceptable standards. Further, there is no showing that the outcome would be any different. Defendant's mere assertion that she may have elected to proceed to trial is not sufficient to meet this showing. *Felix v. State*, 2006 WL 1971786 (Del. Supr.)

Jennings further argues she was not informed of the consequences of her plea by her counsel. However, a review of the electronic transcript indicates her counsel informed her of the rights she was giving up by entering the plea and the

consequences. Thus, I find she was fully informed and voluntarily entered the plea. Further, the Court asked Jennings if she read the plea form, understood the form, and signed the form. To these questions, she answered “yes.”

Accordingly, Defendant’s motion for Post Conviction Relief to vacate the conviction is hereby DENIED.

**SO ORDERED**

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Alex J. Smalls  
Chief Judge

Jennings-OP Jun 07