

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR KENT COUNTY**

<b>STATE OF DELAWARE</b>	)	
	)	
v.	)	RK08-10-0891-01
	)	RK08-10-0892-01
<b>PATRICK M. RAMIREZ</b>	)	RK08-10-0894-01
	)	RK08-10-0895-01
Defendant.	)	RK08-10-0896-01
ID. No. 0708029559	)	RK08-10-0897-01

**ORDER**

On this 24th day of October, 2011, upon consideration of the Defendant’s Motion for Postconviction Relief, the Commissioner’s Report and Recommendation and the record in this case, it appears that:

(1) The defendant, Patrick M. Ramirez (“Ramirez”), pled guilty on June 25, 2008 to two counts of Delivery of Cocaine, 16 *Del. C.* § 4751. Ramirez was also facing multiple additional drug charges stemming from his sale of Cocaine to an undercover police officer on several separate occasions, some of which were video taped. In exchange for Ramirez’ plea, the State entered *nolle prosequis* on the remaining charges.

(2) As part of the Plea Agreement, Ramirez acknowledged that he was eligible to be sentenced as an habitual offender. The Court sentenced Ramirez to a total of eleven years incarceration followed by probation. Had Ramirez gone to trial and been convicted as charged, he would have faced the possibility of life in prison.

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*October 24, 2011*

(3) Ramirez did not appeal his conviction to the State Supreme Court.

(4) Ramirez filed, *pro se*, a motion under Superior Court Criminal Rule 35 to correct an illegal sentence.

(5) This Court denied the motion.

(6) Ramirez appealed the denial of his motion to the State Supreme Court. The Supreme Court found Ramirez' appeal meritless and denied his appeal.<sup>1</sup> The court noted that: "There is no evidence in the record before us that Ramirez' sentences are illegal in any respect. Because there is no basis for a Rule 35(a) claim, we conclude that the judgment of the Superior Court must be affirmed."<sup>2</sup>

(6) Ramirez then filed the instant Motion for Postconviction Relief pursuant to Superior Court Rule 61.

(7) The Court referred this motion to the Superior Court Commissioner Andrea M. Freud pursuant to 10 *Del. C.* §512(b) and Superior Court Criminal Rule 61 for proposed finding of facts and conclusions of law.

(8) The Commissioner has filed a Report and Recommendation concluding that the Motion for Postconviction Relief should be denied because it is procedurally barred and for failure to demonstrate cause and prejudice.

**NOW, THEREFORE**, after careful and *de novo* review of, and for reasons stated in the Commissioner's Report and Recommendation date August 30, 2011,

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<sup>1</sup> *Ramirez v. State*, 2010 WL 3027028 (Del. Supr.).

<sup>2</sup> *Id.*

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**IT IS ORDERED** that the Commissioner's Report and Recommendation is adopted by the Court and the Defendant's Motion for Postconviction Relief is **DENIED.**

/s/ Robert B. Young  
J.

RBV/sal  
oc: Prothonotary  
cc: The Honorable Andrea M. Freud  
Counsel  
Defendant  
File

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**COMMISSIONER'S REPORT AND RECOMMENDATION**

**Upon Defendant's Motion for Postconviction Relief  
Pursuant to Superior Court Criminal Rule 61**

Deborah J. Weaver, Esq., Deputy Attorney General, Department of Justice, for the State of Delaware.

Patrick M. Ramirez, *Pro se*.

FREUD, Commissioner  
August 30, 2011

The defendant, Patrick M. Ramirez (“Ramirez”), pled guilty on June 25, 2008 to two counts of Delivery of Cocaine, 16 *Del. C.* § 4751. Ramirez was also facing multiple additional drug charges stemming from his sale of Cocaine to an undercover

police officer on several separate occasions, some of which were video taped. In exchange for Ramirez' plea, the State entered *nolle prosequis* on the remaining charges. As part of the Plea Agreement, Ramirez acknowledged that he was eligible to be sentenced as a habitual offender. The parties agreed to an immediate sentencing. The State recommended fifteen years and six months incarceration and Ramirez' attorney recommended a sentence of seven years. The Court sentenced Ramirez to a total of eleven years incarceration followed by probation. Had Ramirez gone to trial and been convicted as charged, he would have faced the possibility of life in prison.

Ramirez did not appeal his conviction to the State Supreme Court. Instead he filed, *pro se*, a motion under Superior Court Criminal Rule 35 to correct an illegal sentence. This Court denied the motion. Ramirez appealed the denial of his motion to the State Supreme Court. The Supreme Court found Ramirez' appeal meritless and denied his appeal.<sup>3</sup> The court noted that: "There is no evidence in the record before us that Ramirez' sentences are illegal in any respect. Because there is no basis for a Rule 35(a) claim, we conclude that the judgment of the Superior Court must be affirmed."<sup>4</sup>

### **RAMIREZ' CONTENTIONS**

Next, Ramirez filed the instant Motion for Postconviction Relief pursuant to Superior Court Rule 61. In his motion, he raises the following grounds for relief:

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<sup>3</sup> *Ramirez v. State*, 2010 WL 3027028 (Del. Supr.).

<sup>4</sup> *Id.*

- Ground One: Ineffective assistance of counsel.  
Counsel filed nothing in Defendants (sic) Defence (sic) “see docket sheet in appendix.” counsel failed to address mitigating factors during sentencing p[r]ocedures failed to address evidence left after search and Defendant still c[h]arged.
- Ground Two: Ineffective assistance of counsel.  
Defendant was accused of being a mental patient and counsel failed to address the Court to have a mental heal evaluation done.
- Ground Three: Disproportionate sentence.  
Sentence is disproportionate to other similarly situated. Co-defendant was a habitual offender in Florida he also was charged with guns and still received a lighter sentence.

### **DISCUSSION**

Under Delaware law, this Court must first determine whether Ramirez has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of his postconviction relief claim.<sup>5</sup> This is Ramirez’ first motion for postconviction relief, and it was filed within one year of his conviction becoming final. Therefore, the requirements of Rule 61(i)(1) - requiring filing within one year and (2) - requiring that all grounds for relief be presented in initial Rule 61 motion, are met. To the extent Ramirez’ claims were not raised at the plea, sentencing, or on

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<sup>5</sup> *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

direct appeal, they are barred by Rule 61(i)(3), absent a demonstration of cause for the default and prejudice. Ramirez' first and second grounds for relief are based on ineffective assistance of counsel; therefore, he has alleged cause for his failure to have raised them earlier.

At this point, Rule 61(i)(3) does not bar relief as to Ramirez' first and second grounds for relief, provided he demonstrates that his counsel was ineffective and that he was prejudiced by counsel's actions. To prevail on his claims of ineffective assistance of counsel, Ramirez must meet the two-prong test of *Strickland v. Washington*.<sup>6</sup> In the context of a guilty plea challenge, *Strickland* requires a defendant show: (1) that counsel's representation fell below an objective standard of reasonableness; and (2) that counsel's actions were prejudicial to him in that there is a reasonable probability that, but for counsel's error, he would not have pled guilty and would have insisted on going to trial and that the result of a trial would have been his acquittal.<sup>7</sup> The failure to establish that a defendant would not have pled guilty and would have proceeded to trial is sufficient cause for denial of relief.<sup>8</sup> In addition, Delaware courts have consistently held that in setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice

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<sup>6</sup> 466 U.S. 668 (1984).

<sup>7</sup> *Id.* at 687.

<sup>8</sup> *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997) (citing *Albury v. State*, 551 A.2d 53, 60 (Del. 1988))(citations omitted).

and substantiate them or risk summary dismissal.<sup>9</sup> When examining the representation of counsel pursuant to the first prong of the *Strickland* test, there is a strong presumption that counsel's conduct was professionally reasonable.<sup>10</sup> This standard is highly demanding.<sup>11</sup> *Strickland* mandates that, when viewing counsel's representation, this Court must endeavor to “eliminate the distorting effects of hindsight.”<sup>12</sup>

Following a complete review of the record in this matter, it is abundantly clear that Ramirez has failed to allege any facts sufficient to substantiate his claim that his attorney was ineffective. I find counsel's affidavit, in conjunction with the record, more credible than Ramirez' contention that his counsel's representation was ineffective. Ramirez was facing trial on several serious charges and risked being sentenced to life if found guilty. Ramirez' counsel was able to negotiate a plea bargain with the State which resulted in only eleven years of incarceration. Ramirez and his attorney discussed the case prior to the entry of the plea. The plea bargain was clearly advantageous to Ramirez. Counsel's representation was certainly well within the range required by *Strickland*. Additionally, when Ramirez entered his

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<sup>9</sup> See e.g., *Outten v. State*, 720 A.2d 547, 557 (Del. 1998) (citing *Bughner v. State*, 1995 WL 466465 at \*1 (Del. Supr.)).

<sup>10</sup> *Albury*, 551 A.2d at 59 (citing *Strickland*, 466 U.S. at 689).

<sup>11</sup> *Flamer v. State*, 585 A.2d 736, 754 (Del. 1990) (quoting *Kimmelman v. Morrison*, 477 U.S. 365, 383 (1986)).

<sup>12</sup> *Strickland*, 466 U.S. at 689.



guilty plea, he stated he was satisfied with defense counsel's performance. He is bound by his statement unless he presents clear and convincing evidence to the contrary.<sup>13</sup> Consequently, Ramirez has failed to establish that his counsel's representation was ineffective under the *Strickland* test.

Even assuming, *arguendo*, that counsel's representation of Ramirez was somehow deficient, Ramirez must satisfy the second prong of the *Strickland* test, prejudice.<sup>14</sup> In setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk dismissal.<sup>15</sup> Ramirez makes little, if any, attempt to show prejudice. Ramirez does not show that had he gone to trial that he would have been acquitted. His claims are insufficient to establish prejudice.

To the extent that Ramirez alleges his plea was involuntary, the record clearly contradicts such an allegation. When addressing the question of whether a plea was constitutionally knowing and voluntary, the Court looks to the plea colloquy to determine if the waiver of constitutional rights was knowing and voluntary.<sup>16</sup> At the guilty-plea hearing, the Court asked Ramirez whether he understood the nature of the

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<sup>13</sup> *Mapp v. State*, 1994 WL 91264, at \*2 (Del. Supr.) (citing *Sullivan v. State*, 636 A.2d 931, 937-938 (Del. 1994)).

<sup>14</sup> I note given the Supreme Court's determination on direct appeal that Ramirez' plea was voluntary, that it is virtually impossible to find prejudice.

<sup>15</sup> *Larson v. State*, 1995 WL 389718, at \*2 (Del. Supr.)(citing *Younger*, 580 A.2d 552, 556 (Del. 1990)).

<sup>16</sup> *Godinez v. Moran*, 509 U.S. 389, 400 (1993).

charges, the consequences of his pleading guilty, and whether he was voluntarily pleading guilty. The Court asked Ramirez if he understood he would waive his constitutional rights if he pled guilty; if he understood each of the constitutional rights listed on the Truth-in-Sentencing Guilty Plea Form (“Guilty Plea Form”); and whether he gave truthful answers to all the questions on the form. The Court asked Ramirez if he had discussed the guilty plea and its consequences fully with his attorney. The Court asked Ramirez if he was giving the plea of his own free will because he was in fact guilty. The Court also asked Ramirez if he was satisfied with his counsel's representation. Finally, the Court asked Ramirez if he was in fact guilty of the charges. Ramirez answered each of these questions clearly and affirmatively.<sup>17</sup> The Court also asked if anyone had forced or threatened him into entering the plea, to which he replied, “No.”<sup>18</sup>

Furthermore, prior to entering his guilty plea, Ramirez signed a Guilty Plea Form and Plea Agreement in his own handwriting. Ramirez wrote that he understood the constitutional rights he was relinquishing by pleading guilty and that he freely and voluntarily decided to plead guilty to the charges listed in the Plea Agreement. Ramirez is bound by the statements he made on the signed Guilty Plea Form, unless

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<sup>17</sup> *State v. Ramirez*, ID No.0708029559 at 8-13 (Del. Super. June 25, 2008) (TRANSCRIPT).

<sup>18</sup> *Id.* at 10.

he proves otherwise by clear and convincing evidence.<sup>19</sup> I confidently find that Ramirez entered his guilty plea knowingly and voluntarily and that his grounds for relief are completely meritless.

Ramirez' third ground for relief is virtually identical to the issue he personally raised in his appeal and which the Supreme Court found meritless. To the extent the claims have been raised earlier, they are barred by Rule 61(i)(4). Rule 61(i)(4) bars any ground for relief that was formerly adjudicated unless reconsideration of the claim is warranted in the interest of justice.<sup>20</sup> Ramirez did not challenge the Supreme Court's ruling. Ramirez has made no attempt to argue why reconsideration of his claims are warranted in the interest of justice. The "interest of justice" exception of Rule 61(i)(4) has been narrowly defined to require that the movant "show . . . subsequent legal developments have revealed that the trial court lacked the authority to convict or punish him."<sup>21</sup>

I find that Ramirez' counsel represented him in a competent and effective manner and that Ramirez has failed to demonstrate any prejudice stemming from the representation. I also find that Ramirez' guilty plea was entered knowingly and voluntarily. Consequently, I recommend that the Court *deny* Ramirez' motion for postconviction relief as procedurally barred. This Court is not required to

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<sup>19</sup> *Sommerville*, 703 A.2d at 632.

<sup>20</sup> Super. Ct. Crim. R. 61(i)(4).

<sup>21</sup> *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990).

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reconsider Ramirez' claims simply because they are "refined or restated."<sup>22</sup> For this reason, Ramirez' motion should be dismissed as previously adjudicated under Rule 61(i)(4) and as barred by Rule 61(i)(3) for failure to demonstrate cause and prejudice.

/s/ Andrea Maybee Freud  
Commissioner

AMF/dsc

oc: Prothonotary  
cc: Hon. Robert B. Young  
Deborah J. Weaver, Esq.  
Thomas D. Donovan, Esq.  
Patrick M. Ramirez, VCC  
File

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<sup>22</sup> *Riley v. State*, 585 A.2d 719, 721 (Del. 1990).