

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

STATE OF DELAWARE,	)	
	)	
v.	)	
	)	
JAMAR R. JONES,	)	ID No. 1009013183
	)	
Defendant.	)	

Submitted: March 5, 2012
Decided: June 28, 2012

On Defendant's Motion for Postconviction Relief – DENIED

ORDER

Jamar R. Jones. James T. Vaughn Correctional Center, Smyrna, DE 19977. *Pro se.*

Annemarie Hayes, Esquire. Department of Justice, 820 North French Street, Wilmington, DE 19801.

CARPENTER, J.

This 29th day of June, 2012, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. Defendant Jamar R. Jones was indicted on 32 counts of Rape First Degree and Rape by a Person in a Position of Trust, Authority, and Supervision. Jones waived his preliminary hearing on advice of counsel in exchange for discovery material normally withheld in the early stages of a case. Discovery included police reports, Jones' video recorded confession to the police, the complaining child witness' Child Advocacy Center video recorded interview, and Jones' criminal history. Counsel reviewed these materials with Jones and met with and wrote to Jones on multiple occasions to discuss his case. Counsel also filed several substantive motions, including a motion to dismiss and a motion in limine, and engaged in extensive plea negotiations. As a result of these negotiations, Jones was offered a plea bargain of one count of Rape Second Degree. Jones accepted the plea bargain weeks before his trial was scheduled to begin.

2. Jones now advances two ineffective assistance of counsel claims in his Motion for Postconviction Relief. None of the procedural bars to such motions apply in this case.¹ However, Jones will only prevail on his claims if he establishes: (1) that counsel's representation fell below an objective standard of reasonableness; and (2) that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.² Jones must advance concrete allegations of actual prejudice and substantiate them, and his claims are subject to the strong presumption that counsel's representation was professionally reasonable.³
3. Jones first alleges that counsel was ineffective for failing to argue that the State violated the Double Jeopardy Clause of the United States Constitution by indicting Jones for Rape First Degree and Rape by a Person in a Position of Trust, Authority, and Supervision for each alleged incident.⁴ In fact, counsel did advance a double jeopardy argument in a March 2011 Motion to Dismiss and the State replied that it would not prosecute Jones on those

¹ See Super. Ct. Crim. R. 61(i)(setting forth procedural bars to motions for postconviction relief).

² *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

³ *Dawson v. State*, 673 A.2d 1186, 1196 (Del. Super. 1996), *Winn v. State*, 1998 WL 15002, at *2 (Del. Jan. 7, 1998).

⁴ See *Handy v. State*, 803 A.2d 937, 940 (Del. 2002) ("One of the protections the Double Jeopardy Clause provides is against multiplicity, the charging of a single offense in more than one count of an indictment.") (internal quotations omitted).

charges that violated the Double Jeopardy Clause. The Court notes that Jones still faced 16 counts of Rape First Degree, each carrying a minimum sentence of 25 years in prison.⁵ If convicted, Jones would have served the remaining years of his life in prison. Not only did Jones' attorney successfully advance a double jeopardy argument, he negotiated a plea with the State whereby his client is serving a very small fraction of the sentence he would have served if he had been convicted at trial.

4. Jones also argues that counsel was ineffective for failing to obtain exculpatory DNA evidence from the State prior to Jones' pleading guilty. As a result, Jones contends his plea was not knowingly and intelligently made because he did not understand the entirety of the evidence that potentially could have been presented for and against him at trial. From the responses filed by counsel, it appears there was no DNA evidence available and thus no report was generated. While DNA testing can be helpful to the defense, there must be evidence to test. That simply was not the case here and therefore this argument has no merit.

⁵ See 11 *Del. C.* § 773 (classifying Rape First Degree as a class A felony). The age of the victim at the time of the offenses increased the minimum sentence to 25 years for each count.

5. Finally, Jones argues that counsel was ineffective for failing to investigate the inadmissibility of hearsay evidence and Jones' allegedly coerced confessions to the police. Jones' argument is lacking in particulars and substance and it cannot rebut the strong presumption that counsel's representation was professionally reasonable. The proper time for counsel to object to hearsay evidence is when the State attempts to introduce that evidence during trial. Since Jones pled guilty before trial there was nothing to attack. And while counsel's affidavit failed to reflect why he did not file a motion to suppress Jones' statement to the police, there is no evidence to suggest that the statement was involuntarily given or coerced in some fashion. Counsel is required to have a good faith basis to file a suppression motion and there does not appear to be one in this case. In any event, Jones' guilty plea waived any such objections.⁶
6. During his guilty plea, Jones was asked if he was satisfied with his attorney's representation of him. Jones answered in the affirmative then but claims the opposite now.⁷ It is not uncommon, as a defendant serves a lengthy jail term, that he looks to others to blame for his predicament and

⁶ *Cooper v. State*, 2008 WL 2410404, at *1 (June 16, 2008) (“[A] voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea, including a claim that counsel failed to file a motion to suppress a confession . . .”).

⁷ State Resp. 3.

feels that counsel should have done a better job or negotiated a better plea.

While the Court appreciates that this is a natural reaction, Jones' counsel zealously represented the defendant and negotiated an extremely attractive plea offer for his client. Because Jones' claims of ineffective assistance of counsel fail the *Strickland* test, his Motion for Postconviction Relief is hereby DENIED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.