IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Cr. ID. Nos. 0804016233
	)	0804018738
	)	
ROBERT A. WALDRIDGE,	)	
	)	
Defendant.	)	
	)	

Submitted: November 26, 2010
Decided: January 5, 2011

COMMISSIONER'S REPORT AND RECOMMENDATION THAT DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF SHOULD BE DENIED.

Steven P. Wood, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Robert A. Waldridge, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se.*

PARKER, Commissioner

This 5th day of January, 2011, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. In Criminal Case No. 0804016233, Defendant was charged with one count of Robbery First Degree, Carjacking First Degree, Kidnapping Second Degree and Conspiracy Second Degree. The victim was Patricia Furbush.

2. In Criminal Case No. 0804018738, Defendant was charged with one count of Robbery First Degree, Possession of a Deadly Weapon During the Commission of a Felony and Conspiracy Second Degree. The victim was Ambaram V. Patel.

3. The facts giving rise to these cases reveal that on or about April 13, 2008, Defendant Waldridge went to a Dunkin Donuts along with co-defendants Chapman and Holbrook. Holbrook and Waldridge entered the Dunkin Donuts, Holbrook had the knife, and the clerk there was robbed at gunpoint. Chapman was the driver of the car that the three of them were in.[1]

4. After the robbery at the Dunkin Donuts, Chapman and Waldridge became separated from Holbrook. At around 7:00 a.m. in the morning, Waldridge and co-defendant Chapman approached Patricia Furbush as she was getting her morning cup of coffee on her way to work at a 7-11 convenience store. First, Waldridge asked her for a ride, then Waldridge grabbed her by the arm, told her he had a knife, and forced her to get in the car. Chapman got in the back seat, Waldridge got in the passenger's seat and in angry threatening terms told Patricia Furbush to drive to an ATM and told her which ATM to use. Ms. Furbush withdrew $300 at the ATM.[2]

[1] November 21, 2008 Sentencing Transcript, pg. 6.
[2] November 21, 2008 Sentencing Transcript, pgs. 6-8.

5. Waldridge told Ms. Furbush to drive to the Service Plaza on I-95. Waldridge and Chapman were arguing over Chapman's share of the $300. Waldridge was refusing to give Chapman his share.[3] It was clear to Ms. Furbush that Waldridge was the mean one, the angry one and the one who was in control.[4]

6. At the Service Plaza on I-95, the defendants let Ms. Furbush get out of her car. They then exited the Service Plaza at a very high rate of speed which attracted the attention of a Delaware state police officer who began to pull them over for speeding when he heard the broadcast advising to be on the lookout for a recently carjacked black Honda.[5] Waldridge and co-defendant Chapman were immediately taken into custody. They were transported back to the I-95 Service Plaza where they were identified by the victim Furbush.

7. Defendant Waldridge's criminal history included prior robbery convictions in Pennsylvania and Maryland, and therefore, Waldridge was facing a life sentence as a habitual offender pursuant to 11 *Del. C*. § 4214(b), in the event he was convicted of a felony in either of the two pending cases.

8. The State extended a plea offer that would resolve both of Waldridge's pending cases. The terms of the offer were that Waldridge would plead to two counts of Robbery First Degree and one count of Kidnapping Second Degree and the State would agree to recommend no more than 15 years at Level V.

[3] November 21, 2008 Sentencing Transcript, pg. 7.
[4] November 21, 2008 Sentencing Transcript. pgs. 7-8.
[5] November 21, 2008 Sentencing Transcript, pg. 8.

9. After discussing the plea offer on several occasions with counsel, Waldridge elected to accept it.[6] On September 29, 2008, Waldridge pled guilty to two counts of Robbery First Degree and one count of Kidnapping Second Degree.

10. On November 21, 2008, Waldridge was sentenced to a total of 17 years at Level V, followed by decreasing levels of probation. The sentencing order was modified on February 25, 2009 to provide for restitution to Ms. Furbush.

11. Waldridge did not file a direct appeal from his guilty plea, his November 21, 2008 sentencing, the February 25, 2009 modified sentencing order, or from anything else.

12. On June 21, 2010, Defendant filed this motion for postconviction relief. In his motion, Waldridge alleges that he "could not be allowed to plead guilty to an indictment which is constitutionally barred from prosecution." As a result of this alleged deficiency, Defendant seeks to have his guilty plea vacated on the first degree robbery conviction resulting from the Dunkin Donuts incident.

13. Prior to addressing the substantive merits of any claim for postconviction relief, the Court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61.[7] If a procedural bar exists, then the claim is barred and the Court should not consider the merits of the postconviction claim.[8]

14. Rule 61 (i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;[9] (2) any basis for relief must have been asserted previously in a prior postconviction proceeding; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules unless the

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[6] Trial Counsel's Affidavit in Response to Rule 61 Motion.
[7] *Younger v. State,* 580 A.2d 552, 554 (Del. 1990).
[8] *Id.*
[9] If the final order of conviction occurred on or after July 1, 2005, the motion must be filed within one year. See, Super.Ct.Crim.R. 61(i)(1)(July 1, 2005).

movant shows prejudice to his rights or cause for relief; and (4) any basis for relief must not have been formally adjudicated in any proceeding. The bars to relief under (1), (2), and (3), however, do not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.[10] Moreover, the procedural bars of (2) and (4) may be overcome if "reconsideration of the claim is warranted in the interest of justice."[11]

15. In this case, Defendant's motion is procedurally barred. Rule 61(i)(1) applies because Waldridge filed this motion more than one year after his final order of conviction. Defendant was sentenced on November 21, 2008, and therefore his conviction became final on or about December 2008. The one year window for filing a motion for postconviction relief began in December 2008 and ended one year later on or about December 2009. Defendant failed to file his motion for postconviction relief during this applicable one-year limit. Even if Defendant's order of conviction did not become final until the sentence was modified to include restitution owed to victim Furbush, the sentence was modified in February 2009, thereby rendering his conviction final on or about March 2009. Any postconviction motion became time-barred after March 2010. This motion filed on June 21, 2010, was filed clearly outside the applicable one-year limit. Waldridge's motion is time-barred.

16. Defendant's motion is also procedurally barred by Rules 61(i)(2) and (3), for his failure to raise the subject claim in any prior postconviction proceeding. Defendant was

[10] Super.Ct.Crim.R. 61(i)(5).
[11] Super.Ct.Crim.R. 61(i)(4).

required to present the claim that he raises in the subject motion, at the time of his plea, the time of sentencing or on direct appeal. Having failed to do so, the claim is now barred pursuant to Rule 61(i)(2) and Rule 61(i)(3).

17. Even if Defendant's claim is not procedurally barred, it is without merit.

18. In the subject motion, Waldridge contends that the "State could not pursue a first degree robbery conviction against Waldridge given Delaware's 11 *Del. C*. § 271 and the subsequent Delaware Supreme Court decision in Allen, 970 A.2d 203, 206, which precluded any first degree robbery conviction in [the Dunkin Donut's indictment]". Waldridge seeks to have his conviction on the Dunkin Donut's first degree robbery dismissed. It is noted that Waldridge does not contest his conviction or sentence on the charges arising from the Furbush incident.

19. Waldridge's claim is without merit. Waldridge was facing a life sentence as a habitual offender if convicted of a felony in either of his two pending cases. The State offered a plea which resolved both of his pending cases thereby allowing Waldridge to avoid a life sentence. The case against Waldridge in the Furbush incident was overwhelming. He was arrested in the carjacked car and identified by the victim on the day of the incident. If he rejected the plea, which was offered as a package to resolve both cases, and went to trial, even if he successfully defended the charges stemming from the Dunkin Donuts incident, a conviction in the Furbush incident could have resulted in a life sentence.

20. Waldridge received a significant benefit by accepting the plea and his guilty plea represented a rational choice given the charges and possible sentences he was facing.

21. Contrary to Waldridge's assertion, the State could, in fact, pursue a first degree robbery charge against Waldridge in the Dunkin Donuts incident. Contrary to Waldridge's assertion, 11 *Del. C*. § 271 and the subsequent Delaware Supreme Court decision in *Allen*[12], did not preclude a first degree robbery conviction in the Dunkin Donut's indictment. The *Allen*[13] decision merely concerns jury instructions and it does not have any applicability in Waldridge's case which did not involve a trial.[14] For that matter, the *Allen* case also did not create any newly recognized retroactive substantive right.[15]

22. Waldridge could have rejected the plea offer and elected instead to go to trial. At trial, the jury would decide whether the State proved all of the necessary elements of first degree robbery beyond a reasonable doubt. The jury could have convicted Waldridge on the first degree robbery charge in the Dunkin Donuts case. The jury could have decided that Waldridge, who went into the store with co-defendant Holbrook, intended to rob the store at knifepoint. At the time Waldridge accepted the plea, he was fully aware of the evidence that the State intended to offer at trial in the Dunkin Donuts incident. Waldridge was fully aware that co-defendant Gunthur Chapman, the co-defendant that participated in both robberies with Waldridge, had accepted a plea offer with a condition that he testify truthfully against Waldridge.[16] There was evidence sufficient to establish Waldridge's guilt on the first degree robbery charge.

[12] *Allen v. State,* 970 A.2d 203 (Del. 2009).
[13] *Allen v. State,* 970 A.2d 203 (Del. 2009).
[14] *Dailey v. State,* 2009 WL 3286024, at *1 (Del.).
[15] See, *Richardson v. State,* 3 A.3d 233 (Del. 2010).
[16] Trial Counsel's Affidavit in Response to Rule 61 Motion.

23. Prior to accepting the plea, Waldridge's trial counsel discussed the plea offer with him in several meetings.[17] Waldridge was fully aware of his potential to be sentenced as a habitual offender should he be convicted of a felony in either of his two pending cases. Waldridge was fully aware of his constitutional trial rights.[18] The decision to enter his guilty plea to resolve both pending cases was knowing, intelligent and voluntary.[19]

24. The record in this case further reflects that Waldridge's guilty plea was entered knowingly, intelligently and voluntarily. At the September 29, 2008 guilty plea hearing, the Superior Court engaged in a thorough discussion with Defendant regarding his decision to plead guilty. The transcript reflects that Defendant stated that he understood the charges to which he was pleading guilty, that he understood the consequences of his decision to plead guilty, that he was satisfied with his counsel's representation, and that his plea was entered voluntarily. Waldridge further stated that he understood he was giving up his right to trial, including the right to be presumed innocent, question the State's witnesses, present witnesses on his own behalf, and personally testify if he chose to do so, and if convicted to appeal to a higher Court. Moreover, Defendant admitted his guilt to having committed both robberies.[20]

25. Defendant signed a Truth-In Sentencing Guilty Plea Form prior to entering his guilty plea in which he also stated that he had not been threatened or forced to enter the plea, that he was satisfied with his attorney's representation, that his attorney fully

[17] Trial Counsel's Affidavit in Response to Rule 61 Motion.
[18] *Id.*
[19] *Id.*
[20] September 29, 2008 Plea Colloquy Transcript

advised him of his rights, that he freely and voluntarily decided to plead guilty, and that all of his answers were truthful.[21]

26. At Waldridge's sentencing, Waldridge again admitted to having committed the robbery at the Dunkin Donuts. Waldridge stated: "I did the robbery and the person's whose guilty . . .There were three people and I don't see how he [the prosecutor] can make one person seem more guilty than the others because they were there. . .[I]t's all because of drugs, I have a drug problem and I can't get off the drugs. . ."[22] (In this admission of guilt, Waldridge is referring to the Dunkin Donuts robbery because he refers to three people committing the robbery, and in the Furbush robbery, there was only two participants.)

27. In the absence of clear and convincing evidence to the contrary, Defendant is bound by the representations he made during his plea colloquy and sentencing.[23] Defendant has not presented any clear, contrary evidence to call into question his prior testimony at the plea colloquy, sentencing, or answers on the Truth-In Sentencing form. As confirmed by the plea colloquy, sentencing hearing, Truth-In Sentencing Guilty Plea Form, and Defendant's trial counsel's Affidavit in response to this motion, Defendant entered his plea knowingly, intelligently and voluntarily.

28. Having concluded that Defendant's plea was entered voluntarily, intelligently, and knowingly, Defendant waived his right to challenge any alleged errors or defects occurring prior to the entry of his plea, even those of constitutional proportions.[24] Specifically, Defendant waived his right to claim that he could not be legally or factually

[21] Truth-In Sentencing Guilty Plea Form dated September 29, 2008.
[22] November 21, 2008 Sentencing Transcript, at pgs. 9-10.
[23] *Somerville v. State,* 703 A.2d 629, 632 (Del. 1997).
[24] *Somerville v. State,* 703 A.2d 629, 632 (Del. 1997); *Mojica v. State*, 2009 WL 2426675 (Del. 2009); *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2004).

charged for committing the crimes that he plead to, that he was factually innocent, or that he did not commit the crimes that he plead to. Indeed, Defendant waived all other alleged errors or defects which occurred prior to the entry of his plea. Waldridge's claim which he seeks to raise in this postconviction motion was waived when Defendant knowingly, freely and intelligently entered his plea.

29. To the extent that Waldridge contends that his counsel was somehow ineffective in connection with his decision to accept the plea, any such contention is undermined by the record and fails to satisfy the *Strickland* standard. To prevail on an ineffective assistance of counsel claim, the defendant must show that his counsel's efforts "fell below an objective standard of reasonableness" and that, but for his counsel's alleged errors, there was a reasonable probability that Defendant would not have pled guilty, would have insisted on going to trial and the outcome would have been different.[25]

30. Here, Defendant fails to state a legitimate ground for relief against his counsel. Waldridge's trial counsel discussed the plea offer with him several times. Waldridge was fully aware that he was facing a life sentence if convicted of a felony in either of the two cases. He was fully aware of his constitutional trial rights. He was fully aware of the State's evidence against him at trial.[26]

31. The decision to accept the plea, and not go to trial, does not appear to be deficient in any regard. Waldridge received a significant benefit by accepting the plea. Defense counsel's representation of Defendant was reasonable and Defendant cannot establish that he suffered any prejudice as a result thereof. Waldridge cannot establish that he would have received a lesser sentence if he proceeded to trial. Defendant has

[25] *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).
[26] Trial Counsel's Affidavit in Response to Rule 61 Motion.

failed to satisfy either prong of the *Strickland* test, and therefore, his claims of ineffective assistance of counsel fail.

32. In this case, Defendant has failed to overcome any of the procedural bars by showing a "colorable claim that there was a miscarriage of justice" or that "reconsideration of the claim is warranted in the interest of justice." The "miscarriage of justice" exception is a "narrow one and has been applied only in limited circumstances.[27] The defendant bears the burden of proving that he has been deprived of a "substantial constitutional right."[28] The Defendant has failed to provide any basis, and the record is devoid of, any evidence of manifest injustice. The Court does not find that the "interests of justice" require it to consider the otherwise procedurally barred claim for relief.[29]

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied.

IT IS SO RECOMMENDED.

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Commissioner Lynne M. Parker

oc: Prothonotary
Jennifer-Kate Aaronson, Esquire

[27] *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).
[28] *Id.*
[29] *Id.*