

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

STATE OF DELAWARE)	
)	
v.)	I.D. No. 0811013286
)	
VINCENT L. JEFFERSON)	
)	
Defendant)	

Submitted: November 24, 2010
Decided: February 2, 2011

Upon Defendant's Motion for Postconviction Relief.
DENIED.

ORDER

Gregory E. Smith, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Vincent L. Jefferson, Wilmington, Delaware, *pro se*.

COOCH, R.J.

This 2nd day of February 2011, upon consideration of Defendant's
motion for postconviction relief, it appears to the Court that:

1. Defendant Vincent L. Jefferson has filed this motion for
postconviction relief on the grounds of ineffective assistance of counsel and

“conflict of interest.”¹ In short, Defendant has alleged that his attorney “did not diligently pursue facts of the case,” “did not abide by clients [sic] decisions concerning the objectives of representation,” “did not prep for trial by seeking Rule 16 documents and tangible objects,” and “did not question the credibility of the officers [sic] statements due to times and dates of occurrences.”² Defendant contends that trial counsel’s conduct constituted “a violation of Professional Conduct Rules 1.1, 1.2, 1.3, and 1.4, and a violation of clients [sic] [S]ixth [A]mendment rights.”³

2. On November 5, 2008, Defendant was driving a green 1995 Ford Explorer when he was stopped by Wilmington Police Officers Luke Nuzzi and Don Palmatary.⁴ The officers testified that the vehicle was stopped because the expiration date on Pennsylvania temporary tag was partially obscured by a plastic license plate frame, and that, after stopping the vehicle, they determined that the registration had expired.⁵ Defendant produced a

¹ Def.’s Aug. 16 Mot. for Postconviction Relief at 3. In the instant motion for postconviction relief, Defendant asserts three grounds for relief: 1) “Violation of right to effective assistance of counsel;” 2) “Lawyer did not prep for trial;” and 3) “Conflict of interest.” *Id.* Ground two is subsumed into ground one; both of these claims allege ineffective assistance of trial counsel. Ground three is captioned as a “Conflict of interest,” but review of Defendant’s memorandum discloses that Defendant is asserting a *Brady* claim; Defendant contends that the State lost or failed to disclose videotapes, fingerprints, and witnesses which would have exculpated Defendant. Def.’s Memo. in Support of Postconviction Relief at 3.

² Def.’s Memo. in Support of Postconviction Relief at 1-2.

³ Def.’s Reply to Attorney’s Affidavit [sic] and the State’s Memorandum at 2.

⁴ State’s Memo. in Opp’n. to Def.’s Mot. for Postconviction Relief at 1.

⁵ *Id.*

valid driver's license, but did not produce proof of insurance.⁶ Defendant told the officers that he had just purchased the vehicle and had not yet registered it; a computer check disclosed that the vehicle had not been registered in Delaware, and there was no documentation indicating that title to the vehicle had been transferred to Defendant.⁷

Defendant was charged with motor vehicle offenses and the vehicle was towed.⁸ An inventory search of the vehicle revealed forty-nine (49) "Ziploc" type sandwich baggies of marijuana in the glove compartment; in turn, Defendant was arrested and Mirandized.⁹ Upon being informed that a strip search would be conducted at the police station, Defendant produced another bag from his pants; this bag contained an additional twenty-one (21) "Ziploc" type sandwich baggies of marijuana.¹⁰

3. Following a jury trial in the Superior Court, Defendant was convicted of 1) maintaining a vehicle for keeping controlled substances; 2) possession with intent to deliver marijuana; 3) operating an unregistered motor vehicle; 4) failure to possess motor vehicle insurance; and 5) fictitious or cancelled

⁶ *Id.* As noted by the State, at the suppression hearing and at trial, Defendant insisted that he did provide proof of insurance. *Id.*

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.* Jefferson later denied that this occurred. *Id.*

registration.¹¹ Prior to being sentenced, Defendant filed a notice of appeal to the Supreme Court of Delaware; this appeal was dismissed as interlocutory.¹²

4. On November 6, 2009, Defendant was sentenced to three and one-half years in prison, followed by probation, together with fines.¹³ On direct appeal to the Supreme Court of Delaware, Defendant was represented by counsel.¹⁴ Defendant's conviction and sentence were affirmed by the Supreme Court of Delaware.¹⁵ In affirming Defendant's conviction and sentence, the Supreme Court of Delaware noted that Defendant's appeal consisted solely of "three 'why' questions and one request that [the Supreme

¹¹ *Id.* On the day of trial, Defendant rejected a plea offer whereby he would plead guilty to Possession of Marijuana with Intent to Deliver, and, in exchange, the State would not file an habitual offender petition. Transcript of Jury Trial Proceedings of July 14, 2009 at 13:6:3-34:1 [hereinafter "Tr. at ____"]. In light of Defendant's prior criminal history, this plea would have entailed a minimum mandatory sentence of three years. 16 Del. C. § 4763(a)(2); Tr. at 13:9-14.

¹² *Jefferson v. State*, 2009 WL 4263654 (Del. 2009). Defendant also filed a petition for a writ of *habeas corpus* in the United States District Court for the District of Delaware on October 2, 2009, prior to being sentenced; this petition is apparently still pending. See *Jefferson v. Morgan*, 2010 WL 2802534 (D. Del. 2010).

¹³ Sentence Order of Nov. 6, 2009.

¹⁴ Def.'s Aug. 16 Mot. for Postconviction Relief at 2.

¹⁵ *Jefferson v. State*, 2010 WL 2490934, *3 (Del. 2010) ("To the extent that Jefferson complains that the motion to suppress should have been granted, or that there was insufficient evidence presented at trial to support his convictions, or that the State failed to demonstrate an unbroken chain of custody with respect to the drug evidence, or that the jury should not have credited the police officers' version of events, our careful review of the record in this case leads us to conclude that any such complaints are without merit.").

Court of Delaware] ‘take a look at’ two statutes relating to the registration of motor vehicles.”¹⁶

5. Defendant, now *pro se*, timely filed the instant motion for postconviction relief on August 16, 2010. As stated, Defendant’s motion alleged that trial counsel was ineffective because he “did not diligently pursue facts of the case,” “did not abide by clients [sic] decisions concerning the objectives of representation,” “did not prep for trial by seeking Rule 16 documents and tangible objects,” and “did not question the credibility of the officers [sic] statements due to times and dates of occurrences.”¹⁷ Defendant also asserts that trial counsel was ineffective because trial counsel “did not take the defense of the client to be not guilty but only the defense if [sic] the client was using or selling which the defendant never admitted to either.”¹⁸

6. Assistant Public Defender Ralph D. Wilkinson, IV, Esquire was defendant’s trial counsel on the instant charges.¹⁹ Via an affidavit of October 11, 2010, Mr. Wilkinson denied Defendant’s allegations of ineffective assistance of counsel; Mr. Wilkinson’s affidavit provides as follows:

1. Defendant claims in Ground one that Counsel “did not diligently pursue facts of the case, nor did he persue [sic] certain matters on behalf of client.”

¹⁶ *State v. Jefferson*, 998 A.2d 851, *1 (Del. 2010).

¹⁷ Def.’s Memo. in Support of Postconviction Relief at 1-2.

¹⁸ *Id.* at 1.

¹⁹ Aff. of Ralph D. Wilkinson, IV at 1.

Counsel denies the above claims of defendant. Counsel reviewed all discovery. Counsel filed a motion to suppress and a hearing was held. The motion was denied. An appeal was filed by Counsel's office.

2. Defendant claims in Ground two that "lawyer did not prep for trial." Furthermore, defendant alleges "Lawyer did not seek material of Rule 16 documents and tangible objects." Counsel denies the above claims of defendant.

3. Defendant claims in Ground three that there was a conflict of interest. He also claims "Defendant raised issue of conflict before trial and the court knowingly continued with the trial." Counsel denies the existence of a conflict of interest.²⁰

7. After Defendant filed his motion for postconviction relief, the State filed its response.²¹ In turn, Defendant filed a Reply which restates his allegations as follows:

Client also asked attorney to obtain certain material under Superior Ct. Rule 16 (B,C). Fingerprints from packaging that was removed from the vehicle. Videotapes from the police station, even a simple inventory sheet which the officer claimed was filled out as a result of the search. None of these items were placed in my files or my overall brief, which before the suppression hearing, after the suppression hearing, and before trial I asked the attorney to retrieve these things before court. During the day of trial the attorney then tells the defendant that the prosecutor simply did not possess or didn't know where these items were.

As a result of the above actions before trial began, I discussed these issues with Mr. Wilkinson, and asked the court for a continuance to find proper counsel which I was denied, and that is also on record.

* * *

²⁰ *Id.*

²¹ State's Memo. in Opp'n. to Def.'s Mot. for Postconviction Relief.

Defendant shows that as a result of counsel's poor planning, and performance, there is reasonable probability, the result of the proceedings would have been different if all evidence and testimonies was questioned [sic].²²

8. Significantly, this Court engaged in a colloquy with Defendant immediately prior to commencing trial.²³ On the day of trial, Defendant expressed dissatisfaction with trial counsel's performance because trial counsel did not address alleged violations of Defendant's Fourth and Fifth Amendment rights, notwithstanding trial counsel's representation of Defendant during a suppression hearing.²⁴ During this colloquy, Defendant advised the Court that he "[did] not feel comfortable" with Mr. Wilkinson as his lawyer and requested that his trial be rescheduled so that he could obtain another attorney; this Court denied Defendant's request and presented Defendant with the options of proceeding *pro se* or retaining Mr. Wilkinson.²⁵ Although Defendant insisted that he wanted a "better lawyer" to represent him during his trial, he nonetheless stated that he did not wish to waive his right to counsel; accordingly, Defendant was represented by Mr. Wilkinson through his trial.²⁶

²² Def.'s Reply to Attorney's Affidavit [sic] and the State's Memorandum at 2.

²³ Tr. at 23.

²⁴ *Id.*

²⁵ *Id.* at 23:14-32:21.

²⁶ *Id.*

9. Defendant's claims of ineffective assistance of counsel are governed by the United States Supreme Court's decision in *Strickland v.*

Washington.²⁷ Under *Strickland*, Defendant bears the burden of proof in meeting a two prong test: that counsel's efforts "fell below an objective standard of reasonableness" and that, but for counsel's alleged error there was a reasonable probability that the outcome would have been different.²⁸

To prevail on a claim of ineffective assistance of counsel, Defendant must "overcome the strong presumption that his counsel's representation was professionally reasonable."²⁹ The Court will evaluate trial from counsel's perspective at the time of trial to avoid "the distorting effects of hindsight."³⁰ Similarly, a Court "cannot require defense counsel to choose one particular defense strategy over any other strategy that falls within the 'wide range of professionally competent assistance.'"³¹

10. Defendant has alleged that defense counsel was ineffective because he "did not diligently pursue facts of the case," "did not abide by clients [sic] decisions concerning the objectives of representation," "did not prep for trial by seeking Rule 16 documents and tangible objects," and "did not question

²⁷ 466 U.S. 668 (1984).

²⁸ *Id.* at 668-691.

²⁹ *Gattis v. State*, 697 A.2d 1174, 1178 (Del. 1997).

³⁰ *Id.* (citation omitted).

³¹ *Oliver v. Wainwright*, 795 F.2d 1524, 1531 (11th Cir. 1987) (quoting *Strickland*, 466 U.S. at 688-89).

the credibility of the officers [sic] statements due to times and dates of occurrences.”³² Upon review of the facts and history of this case, these contentions fail to meet the test established in *Strickland*. Indeed, the facts of this case are devoid of any basis to find Mr. Wilkinson’s representation to be ineffective. Defendant has made the wholly unsupported allegations that trial counsel did not prepare for trial or abide by his decisions, and trial counsel unequivocally denied these allegations.³³ As explained in the State’s Response and confirmed by the foregoing colloquy, Mr. Wilkinson filed a motion to suppress which was argued before this Court on April 16, 2009, and that motion was denied by this Court. Notwithstanding Defendant’s continued insistence that trial counsel’s refusal to argue the constitutionality of the search and seizure at trial constituted ineffective assistance of counsel, this Court thoroughly advised Defendant that the constitutional issues were not at issue in the trial, and that the proper forum for such arguments was on direct appeal to the Supreme Court of Delaware.³⁴ Significantly, the Supreme Court of Delaware found Defendant’s arguments that the motion to suppress should have been granted to be “without merit,” and, moreover,

³² Def.’s Memo. in Support of Postconviction Relief at 1-2.

³³ Aff. of Ralph D. Wilkinson, IV ¶ 1.

³⁴ See *supra* note 24.

that Defendant's appeal was "wholly without merit and devoid of any arguable appealable issues."³⁵

11. The factual and procedural history of this case disclose that Defendant refused to accept this Court's decision on his motion to suppress and insisted that Mr. Wilkinson argue the constitutional issues at trial, rather than follow the proper procedure and contest the issue on direct appeal. Of course, Mr. Wilkinson could not re-litigate this Court's decision on the motion to suppress during trial; rather than accept this protocol, Defendant requested a continuance on the day of trial, after a jury had been selected, with the alleged reason being his desire to obtain "proper counsel."³⁶ Given the untimely nature of and insufficient basis for Defendant's request, it was denied by this Court.³⁷ Defendant was advised of his right to represent himself, or be represented by Mr. Wilkinson; he opted not to waive his right to an attorney, and Mr. Wilkinson represented Defendant through the trial.

12. Defendant's motion has failed to establish that Mr. Wilkinson's representation fell below an objective standard of reasonableness or that the result would have been different but for Mr. Wilkinson's allegedly ineffective assistance. As stated in *Strickland*, "[a] court must indulge a

³⁵ *Jefferson v. State*, 2010 WL 2490934, *3 (Del. 2010).

³⁶ Tr. at 32.

³⁷ *Id.*

strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.”³⁸ There was both a suppression hearing and a jury trial in this case, and Mr. Wilkinson’s conduct and strategy therein must be given a strong presumption that it was “within the wide range of reasonable professional assistance.”³⁹

13. Moreover, Defendant’s allegations of ineffective assistance of counsel are conclusory and unsubstantiated. Defendant has adduced no facts that would support an allegation of ineffective assistance of counsel. Defendant was required to “make specific allegations of actual prejudice and substantiate them.”⁴⁰ Instead, Defendant merely alleged, in the most general terms, that Mr. Wilkinson was not diligent and did not prepare for trial; as noted, Mr. Wilkinson denied these allegations.⁴¹ Therefore, Defendant’s conclusory allegations failed to rebut the strong presumption that Mr. Wilkinson’s conduct was reasonable, and, in turn, Defendant has failed to meet the *Strickland* test.

14. With respect to Defendant’s vague allegation of a conflict of interest, this allegation seems to contend that the State lost or failed to disclose

³⁸ 466 U.S. 668, 689 (1984).

³⁹ *Id.*

⁴⁰ *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

⁴¹ Aff. of Ralph D. Wilkinson, IV ¶ 2.

certain exculpatory evidence.⁴² Mr. Wilkinson denied the existence of any such conflict.⁴³ Further, to the extent Defendant has framed this issue as a *Brady*⁴⁴ issue, this ground for relief is barred by Superior Court Criminal Rule 61(i)(3), which precludes “[a]ny ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows (A) Cause for relief from the procedural default and (B) Prejudice from violation of movant’s rights.” A *Brady* claim was not raised by Defendant on direct appeal, and he has shown neither cause for relief nor prejudice.⁴⁵ Indeed, the substance of Defendant’s appeal to the Supreme Court of Delaware was composed of “three ‘why’ questions and one request that [the Supreme Court of Delaware] ‘take a look at’ two statutes relating to the registration of motor vehicles.”⁴⁶ As a result, the Supreme Court of Delaware stated that “none of [Defendant’s] points either states a claim or presents an issue that is

⁴² Def.’s Memo. in Support of Postconviction Relief at 3.

⁴³ Aff. of Ralph D. Wilkinson, IV ¶ 3.

⁴⁴ *Brady v. Maryland*, 373 U.S. 83 (1963).

⁴⁵ *See, e.g., Dawson v. State*, 673 A.2d 1186, 1196 (Del. 1996) (holding that capital defendant’s failure to raise the constitutionality of Delaware’s felony murder statute on direct appeal procedurally barred this claim via Rule 61(i)(3)).

⁴⁶ *Jefferson v. State*, 998 A.2d 851, *1 (Del. 2010).

reviewable by this Court.”⁴⁷ Thus, any *Brady* claim is procedurally barred due to Defendant’s failure to raise such a claim on direct appeal.⁴⁸

15. For the reasons stated above, Defendant’s claims for ineffective assistance of counsel are deficient when analyzed under the *Strickland* test. Therefore, Defendant’s motion for postconviction relief is **DENIED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

oc: Prothonotary
cc: Investigative Services

⁴⁷ *Id*; see also *id.* (“Jefferson raises four points for this Court’s consideration, as follows: He asks why he was released on bail after being arrested on traffic charges and then later arrested on drug charges; he asks why an inventory checklist was not completed at the time the police searched his car; he asks why he did not see a chain of custody report or a toxicology report entered into evidence; and, finally, he asks the Court to “take a look at” two Delaware statutes relating to the registration of vehicles.”).

⁴⁸ Notably, Defendant’s appellate counsel filed a motion to withdraw pursuant to Supreme Court Rule 26(c), which provides that counsel may withdraw if an appeal is “wholly without merit.” *Id.* The Court found the appeal to be devoid of merit and affirmed the judgment of the Superior Court, thereby mooting counsel’s motion to withdraw. *Id.* at *3. Defendant briefly referenced appellate counsel in paragraph 11 of the instant motion for postconviction relief, but made no specific allegations of ineffective assistance of appellate counsel; consequently, this Court summarily dismissed Defendant’s motion to the extent it alleged ineffective assistance of appellate counsel.⁴⁸ *State v. Jefferson*, Del. Super., I.D. No. 0811013286, Cooch, R.J. (Sept. 16, 2010) (ORDER).