

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE, )  
 ) ID# 1611001960  
 v. )  
 )  
 AARON J. SMITH, )  
 )  
 Defendant. )

Date Submitted: May 9, 2018  
Date Decided: October 1, 2018

**ORDER**

Upon consideration of Defendant’s Motion for Postconviction Relief;<sup>1</sup> Superior Court Criminal Rule 61; the facts, arguments, and legal authorities set forth in Defendant’s Motion; statutory and decisional law; and the record in this case, **IT APPEARS THAT:**

1. On June 19, 2017, Defendant pled guilty to Possession of a Firearm By a Person Prohibited (“PFBPP”)<sup>2</sup> and was immediately sentenced to 15 years at Level 5, suspended after the 5 year minimum mandatory, for 2 years at Level 4, suspended after 6 months at Level 4, for 18 months at Level 3.<sup>3</sup>

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<sup>1</sup> D.I. 21

<sup>2</sup> D.I. 16. Defendant was charged for Possession of a Firearm By a Person Prohibited (PFBPP), Possession of Ammunition By a Person Prohibited, Carrying a Concealed Deadly Weapon, and Receiving a Stolen Firearm. *Id.* As part of a plea agreement, Defendant pled guilty to PFBPP and the State entered a *nolle prosequi* on all remaining charges. *Id.*

<sup>3</sup> D.I. 18

2. On July 14, 2017, Defendant filed a *pro se* Motion for Sentence Modification on the ground of ineffective assistance of counsel.<sup>4</sup> Defendant's Motion for Sentence Modification was denied August 2, 2017.<sup>5</sup>

3. On May 9, 2018, Defendant timely filed the instant *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61").<sup>6</sup> Defendant asserts three grounds for relief: (1) pretextual traffic stop; (2) illegal search and seizure; and (3) ineffective assistance of counsel.

4. Before considering the substantive merits of any claim for postconviction relief, the Court must determine whether the defendant has met the procedural requirements of Rule 61.<sup>7</sup> If a procedural bar exists, the Court will not consider the merits of Defendant's postconviction claim unless Defendant shows that the exception found in Rule 61(i)(5) applies. Under Rule 61(i)(5), claims otherwise procedurally barred can be heard if Defendant makes out a "colorable claim that there was a miscarriage of justice because of a constitutional violation that undermines the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction."

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<sup>4</sup> D.I. 19

<sup>5</sup> D.I. 20

<sup>6</sup> D.I. 21

<sup>7</sup> Del. Super. Ct. Crim. R. 61(i)(3) bars consideration of any claim "not asserted in the proceedings leading to the conviction" unless the petitioner can show "cause for relief from the procedural default" and "prejudice from violation of the movant's rights."

5. Defendant did not raise either claim of a pretextual traffic stop or an illegal search and seizure during the proceedings leading to his conviction, nor did he raise any such claims on direct appeal. Therefore, the claims of a pretextual traffic stop and an illegal search and seizure are both procedurally barred by Rule 61.<sup>8</sup>

6. Defendant knowingly, intelligently, and voluntarily pled guilty to PFBPP,<sup>9</sup> thereby waiving his right to challenge any alleged errors, deficiencies or defects occurring prior to the entry of his plea.<sup>10</sup>

7. Defendant's ineffective assistance of counsel claim is not procedurally barred.<sup>11</sup> Under the standard set forth in *Strickland v. Washington*, the defendant must establish two factors in order to prevail on a claim of ineffective assistance of counsel.<sup>12</sup> In the context of a guilty plea challenge, *Strickland* requires a

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<sup>8</sup> Del. Super. Ct. Crim. R. 61(i)(3)

<sup>9</sup> Defendant indicated that he read and understood that by pleading guilty he was waiving his constitutional rights: to have a speedy trial by jury; to be presumed innocent until the State proves each and every part of the charges against him beyond a reasonable doubt; to hear and question the witness against him; to present evidence in his defense; to testify or not testify; and to appeal, if convicted. D.I. 17. Defendant affirmed that his counsel had fully advised him of his rights and that he was satisfied with his counsel's representation. *Id.* Defendant represented that he understood that he waived each and every one of those rights by pleading guilty. *Id.*

<sup>10</sup> *State v. Green*, 2015 WL 1598070 (Del. Super. Ct., April 8, 2015) ("A defendant is bound by his answers on the plea form and by his testimony at the plea colloquy in the absence of clear and convincing evidence to the contrary.").

<sup>11</sup> *Sahin v. State*, 7 A.3d 450, 451 (Del. 2010) ("Generally, [the Delaware Supreme Court does] not consider claims of ineffective assistance of counsel in a direct appeal. The reason for that practice, in part, is to develop a record on that issue in a Superior Court Rule 61 post-conviction proceeding.").

<sup>12</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

defendant to show that: (1) counsel's representation fell below an objective standard of reasonableness, and (2) counsel's actions were "so prejudicial that there was a reasonable probability that, but for counsel's deficiencies, the defendant would not have taken a plea but would have insisted on going to trial."<sup>13</sup> There is a strong presumption that counsel's representation was reasonable.<sup>14</sup>

8. Defendant's claim of ineffective assistance of counsel arises from defense counsel's alleged failure to file a motion to suppress the evidence seized at the time of Defendant's arrest.

9. Prior to trial, defense counsel negotiated a plea offer with the State for a single felony.<sup>15</sup> The State indicated that the offer would be revoked if defense counsel filed a suppression motion.<sup>16</sup> The record reflects that defense counsel reviewed the details of the offer with Defendant and Defendant knowingly, intelligently, and voluntarily accepted the plea.<sup>17</sup>

10. Defendant fails to set forth any allegations upon which the Court could find either prong of Strickland satisfied. Defendant does not assert that defense counsel's representation fell below an objective standard of reasonableness or

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<sup>13</sup> *Id.*

<sup>14</sup> *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

<sup>15</sup> *Seemans Aff.*, at p. 2 of D.I. 28

<sup>16</sup> *Id.*

<sup>17</sup> D.I. 17

that, but for defense counsel's alleged substandard representation, the result would have been different. Further, Defendant fails to provide any basis that would permit the Court to consider the applicability of a Rule 61(i)(5) exception.

11. The Court has reviewed the record carefully and concludes that the Defendant's Motion for Postconviction Relief is without merit and the record is devoid of any other substantial ground for relief.

**NOW THEREFORE**, for the foregoing reasons, Defendant's Motion for Postconviction Relief is **DENIED**.

**IT IS SO ORDERED.**



Jan R. Jurden, President Judge

Original to Prothonotary:

cc: Phillip Casale, Esq., DAG  
Aaron Smith, Defendant  
Misty Seemans, Esq.