

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

STATE OF DELAWARE)
)
 v.) I.D. No. 0606002895
)
 CHARLES SPIVEY,)
)
 Defendant.)

UPON CONSIDERATION OF DEFENDANT’S
PRO SE MOTION FOR POSTCONVICTION RELIEF
SUMMARILY DISMISSED.

Submitted: March 26, 2007
Decided: June 18, 2007

This 18th day of June, 2007, it appears to the Court that:

1. Charles Spivey (“Spivey”) accepted an offer to plead guilty to Possession with Intent to Deliver a Narcotic Schedule I Controlled Substance.¹ He was sentenced to five years at Level V followed by various levels of probation.² Now before the Court is Spivey’s first *pro se* motion for postconviction relief.

2. Spivey asserts the following claims in his motion: (1) failure to be informed of his waiver of right to counsel, (2) failure to be informed of

¹ See Docket 5; DEL. CODE ANN. tit. 16, § 4751.

² See Docket 5.

his right to remain silent, (3) coerced confession, and (4) ineffective assistance of counsel. Specifically, with respect to the first two grounds, Spivey claims that his Fifth Amendment rights were violated because Miranda warnings were never given to him until the preliminary hearing. Spivey further maintains that the police coerced him into confessing when, during Spivey's interrogation, an officer allegedly stated that if Spivey told "him something, he [the officer] will let me [Spivey] go."³ Lastly, Spivey contends that his attorney forced him into taking a plea by telling him that "he will be found guilty and the Judge ... is mean."⁴

3. 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 ("Rule 61").⁵ If the procedural requirements of Rule 61 are not met, the Court should not consider the merits of a postconviction claim.⁶

³ See Docket 11, p. 3.

⁴ *Id.*

⁵ *Younger v. State*, 580 A.2d 552, 554 (Del. July 27, 1990). See also *Bailey v. State*, 588 A.2d 1121, 1127 (Del. Super. Ct. 1991).

⁶ *State v. Gattis*, 1995 WL 790961, at *2 (Del. Dec. 28, 1995) (citing *Younger*, 580 A.2d at 554).

4. Rule 61(i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction; (2) any basis for relief must have been asserted previously in any prior postconviction proceeding; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules; and (4) any basis for relief must not have been formerly adjudicated in any proceeding. However, under Rule 61(i)(5), the bars to relief under (1), (2) and (3) 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.”

5. In applying the procedural imperatives to this case, Spivey’s claims are not barred. His motion was timely filed, he has not made prior postconviction motions, and there was no trial, direct appeal, or any other proceeding where his claims could have been adjudicated. Therefore, because the procedural requirements of Rule 61 have been met, the substantive merits of Spivey’s motion will be addressed.

A. Fifth Amendment Violations and Coerced Confession

6. Spivey contends his Fifth Amendment rights were violated because Miranda warnings were not given to him until the preliminary

hearing. He also claims that the police coerced him into confessing during the interrogation. However, because these claims concern events preceding the entry of Spivey's guilty plea, they must fail.

7. "Delaware law provides that a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea[,]"⁷ "even those of constitutional dimension."⁸ In this case, at the conclusion of the plea colloquy, the Court determined that Spivey entered his plea knowingly, intelligently, and voluntarily.⁹ The Court continues to stand behind that finding. Therefore, because Spivey voluntarily entered a guilty plea, his claims of errors or defects occurring before the plea must fail.¹⁰

B. Ineffective Assistance of Counsel

8. Although Spivey does not directly assert a claim of ineffective assistance of counsel, his allegation that counsel coerced him into accepting a plea gives rise to such a claim. To establish his counsel was ineffective, Spivey must satisfy the test originally set forth in *Strickland v.*

⁷ *Perkins v. State*, 2006 WL 3053271, at *1 (Del. Oct. 27, 2006).

⁸ *Smith v. State*, 2004 WL 120530, at *1 (Del. Jan. 15, 2004).

⁹ See Docket 13, p.11.

¹⁰ The Court does note that a review of the arresting officer's affidavit of probable cause submitted in support of the arrest warrant reveals that Spivey was, in fact, mirandized after being taken into custody. The affidavit also reveals that, after being mirandized, Spivey agreed to provide a statement to the police. See Docket 1, Warrant, Ex. B.

Washington.¹¹ That test requires him to demonstrate that (1) “counsel’s performance was deficient...[in that] counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment;” and (2) “the deficient performance prejudiced the defense by showing that counsel’s errors were so serious as to deprive defendant of a fair trial[.]”¹² There is a “strong presumption that the representation was professionally reasonable” and, therefore, the first prong of this test requires a movant to meet a high threshold to establish a violation of the “objective standard of reasonableness.”¹³ The second prong requires that the movant “affirmatively prove prejudice” by establishing to “a reasonable degree of probability that but for counsel’s errors, the outcome of the proceedings would have been different.”¹⁴

9. Spivey has failed to meet this burden. Spivey’s claim that counsel coerced him into taking a plea is unconvincing. Even assuming counsel told Spivey that he would likely be found guilty and that the presiding judge is mean does not, by itself, imply that counsel’s actions fell

¹¹ 466 U.S. 668 (1984).

¹² *Id.* at 687.

¹³ *Fletcher v. State*, 2006 WL 1237088, at *2 (Del. Super. Ct. May 9, 2006) (quoting *State v. Flonnory*, 2003 WL 22455188, at *1 (Del. Super. Ct. Oct. 29, 2003)).

¹⁴ *Fletcher*, 2006 WL 1237088, at *2; *State v. Guinn*, 2006 WL 1454811, at *1 (Del. Super. Ct. May 25, 2006).

below an “objective standard of reasonableness.” What is more, Spivey assured the Court during his plea colloquy that his attorney had not threatened or in any way forced him to plead guilty. There being an absence of clear and convincing evidence to the contrary, Spivey is bound by those representations.¹⁵ Therefore, Spivey’s ineffective assistance of counsel claim must fail.

10. For the foregoing reasons, Spivey’s motion for postconviction relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

cc: Charles Spivey
Shawn Martyniak, Esq.

¹⁵ *Felix v. State*, 2006 WL 1971786, at *2 (Del. July 14, 2006).