

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
) I.D. No. 0908020161
 v.)
)
 PEDRO J. RIVERA)
)
 Defendant)

Submitted: October 28, 2011

Decided: January 25, 2012

Upon Defendant's Motion for Postconviction Relief.

SUMMARILY DISMISSED.

ORDER

Caterina Gatto, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Pedro J. Rivera, Wilmington, Delaware, *pro se*.

COOCH, R.J.

This 25th day of January, 2012, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. Defendant pled guilty on August 10, 2010 to two counts of Burglary Second Degree and was sentenced to a ten-year Level V sentence for each count. Defendant's two ten-year Level V sentences run consecutively. Defendant filed this Motion for Postconviction Relief alleging ineffective assistance of counsel, violations of Defendant's rights to a fair trial, and judicial abuses of discretion. Additionally, Defendant seemingly seeks to withdraw his guilty plea.

2. Defendant's Motion proffers merely conclusory allegations in support of his claims and provides no further supplementation. Defendant's Motion is **SUMMARILY DISMISSED** for failing to provide an adequate basis for the requested relief.
3. Defendant was indicted on various criminal charges after a string of burglaries in New Castle County in August 2009. Defendant moved to sever portions of those charges. The Court denied Defendant's Motion to Sever Charges by letter opinion dated August 9, 2010.¹
4. Defendant then pled guilty on August 10, 2010 to two counts of Burglary Second Degree. At all times relevant to this Motion, Defendant was represented by Robert M. Goff, Jr., Esquire. Defense counsel asserted that Defendant's plea was "knowing, intelligent and voluntary."² Additionally, before entering his plea, Defendant participated in a thorough plea colloquy. During the colloquy, Defendant repeatedly affirmed that he was entering his plea knowingly, freely, and voluntarily.³
5. Furthermore, Defendant answered, "No" when asked by the Court, "Has your lawyer, the State, or anyone threatened or forced you to enter this plea?"⁴ Defendant stated his understanding that by accepting his plea he surrendered his constitutional right to a speedy and public trial.⁵ Defendant answered affirmatively when asked by the Court, "Are you satisfied with Mr. Goff's representation of you and [also satisfied] that he has fully advised you of your rights?"⁶
6. Finally, Defendant answered, "Yes, Sir" when asked whether he understood that "What's being done today [at the plea hearing] is final," and that Defendant, "will not be able to come back at any later time to seek to withdraw these guilty pleas?"⁷

¹ *State v. Rivera*, 2010 WL 3133593 (Del. Super. Aug. 9, 2010).

² Plea Colloquy Tr. at 5.

³ *Id.* at 6-7, 12.

⁴ *Id.* at 7.

⁵ *Id.*

⁶ *Id.* at 10.

⁷ *Id.* at 12.

7. Defendant was sentenced on October 22, 2010 to serve consecutive ten-year sentences and was adjudged a habitual criminal offender pursuant to 11 Del. C. §4214(a) as to both counts. No appeal was taken to the Delaware Supreme Court. Defendant filed this Motion for Postconviction Relief on October 26, 2011.
8. Defendant moves for relief on four grounds: (1) “Involuntary Plea Under Distress From Legal Representation”; (2) “Ineffective Assistance of Counsel”; (3) “Violation of Constitutional Rights”; and (4) “Abuse of Judge’s Discretion.”⁸
9. Defendant’s arguments in support of his four claimed grounds for relief are set forth, in toto:

Ground One: Involuntary Plea Under Distress From Legal Representation

I was figuratively forced to take a plea due to weak representation. My lawyer had no desire to indulge in a trial.

Ground Two: Ineffective Assistance of Counsel

My representation was flawed in many ways that will be explained in further submitted arguments.

Ground Three: Violation of Constitutional Rights

My right to a fair trial was violated in several different aspects.

Ground Four: Abuse of Judge’s Discretion

My Presiding Judge violated my right to a fair trial by not severing my trial as well as by forcing me to remain with faulty counsel after I expressed disdain as well as disadvantage.⁹

⁸ Def’s M. for Postconviction Relief at 3.

⁹ *Id.*

10. While Defendant stated in his Motion that he would provide “further submitted arguments,” the Court, as of today’s date, has not received any further submissions from Defendant regarding this Motion.¹⁰
11. To avoid summary dismissal, a movant must do more than make conclusory assertions of law or fact. A movant must support the assertions with “concrete allegations of actual prejudice, or risk summary dismissal.”¹¹ Sufficiently developed allegations are required in support of all grounds for relief, including claims of ineffective assistance of counsel.¹² The word “conclusory” has been defined as, “[e]xpressing a factual inference without stating underlying facts on which the inference is based.”¹³
12. The Delaware Supreme Court has cautioned that the “preferable practice” in a Defendant’s first postconviction relief motion involving a claim of ineffective assistance of counsel is to obtain an affidavit from defense counsel in response to the factual allegations.¹⁴ Although the Delaware Supreme Court addressed the “preferable practice” in the context of a guilty verdict, the reasoning seems to apply with equal force to post-sentencing motions to withdraw a guilty plea resulting from ineffective assistance of counsel because it allows defense counsel to be heard and creates a complete record for appellate review.¹⁵
13. However, the Delaware Supreme Court has also explained that an affidavit from trial counsel is not required where a trial Judge assumes, for the purposes of argument, that counsel’s representation was unreasonable.¹⁶ If the Court assumes that representation was ineffective, the Court must then inquire whether Defendant was prejudiced from the assumed ineffectiveness.¹⁷

¹⁰ *Id.*

¹¹ *State v. Childress*, 2000 WL 1610766 at *1 (Del. Super. Sept. 19, 2000).

¹² *See, e.g., State v. Robbins*, 1996 WL 769219 at *1 (Del. Super. Dec. 18, 1996)

¹³ Black’s Law Dictionary, (8th ed. 2004).

¹⁴ *Horne v. State*, 887 A.2d 973, 975 (Del. 2005) (emphasis added).

¹⁵ *Id.*

¹⁶ *Franklin v. State*, 901 A.2d 119 (Del. 2006) (TABLE).

¹⁷ *Id.*

14. The United States District Court District of Delaware has cautioned that, “[t]he harsh sanction of summary denial of a postconviction motion that alleges ineffectiveness of counsel should be reserved for cases where the allegations of deficient performance are *truly conclusory*, or where the applicable substantive law related to the alleged error(s) does not support the conclusion that the attorney’s performance was deficient.”¹⁸ The District Court found that summary dismissal was inappropriate because Defendant articulated an ineffective assistance of counsel claim supported by specific allegations of Defendant’s prejudice.¹⁹
15. No such specific allegations of any kind have been made in this case. Defendant’s terse accusations of ineffective assistance of counsel are without merit, even if the Court assumes for the purposes of argument that trial counsel was ineffective. The case falls neatly within the jurisprudence’s handling of “truly conclusory” claims.²⁰ Defendant’s conclusory allegations do not require the Court employ the “preferable practice” and demand an affidavit from trial counsel.²¹ Summary Dismissal is the appropriate result for Defendant’s Motion for Postconviction Relief. Defendant’s claims are entirely conclusory and lack any statement of underlying facts or law which provide any basis for the asserted inferences. This Court also notes that Defendant’s original filing was immediately before the time to file same had expired.
16. Despite the Defendant’s conclusory allegations, if the Court nevertheless were to analyze Defendant’s substantive claims, the Motion remains lacking. First, Defendant claims that his ineffective representation resulted in his forced acceptance of the guilty plea and that the judge abused his discretion partially by not removing Defendant’s counsel despite alleged appeals by Defendant claiming counsel was ineffective.

¹⁸ *Anker v. Wesley*, 670 F. Supp.2d 339, 346-47 (D. Del. 2009) (emphasis added).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Horne*, 887 A.2d 973 at 975. Notably, if the Court requested an affidavit from trial counsel, it is unclear how counsel could possibly respond in a way to provide helpful information. Defendant’s Motion is so entirely conclusory and non-specific that counsel would simply be responding to Defendant’s conclusory accusations with similar generality. Such an affidavit would be of little help to the Court in this analysis.

17. To establish a claim of ineffective assistance of counsel, a defendant must show that trial counsel's representation fell below an objective standard of reasonableness and that but for the attorney's errors, the outcome of the trial would have been different.²² Regarding prejudice, "[d]efendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome."²³
18. Additionally, to withdraw a previously entered guilty plea after the sentence has been imposed, a movant must demonstrate that the plea was either involuntary, or entered because of misapprehension or a legal mistake.²⁴ A voluntarily entered guilty plea serves to waive a defendant's right to challenge any errors or defects before the plea.²⁵ "In the absence of clear and convincing evidence to the contrary, [defendant] must be bound by what he said at the time of the plea."²⁶
19. Even if the Court assumes for purposes of argument that counsel's representation was unreasonable, Defendant still must demonstrate prejudice. Other than the conclusory claim that Defendant was forced to accept the plea, Defendant has not demonstrated prejudice such that the outcome of the proceedings would have been different with effective counsel. There is no intimation from Defendant that other counsel would not have recommended Defendant accept the plea.
20. Perhaps most notably, Defendant's statements that it was his counsel's ineffectiveness which forced him to accept the plea deal stands in direct contrast to Defendant's affirmations at the plea colloquy that he was satisfied with his attorney's performance and that he was not forced to accept the plea. Therefore, even if the Court assumes for the purposes of argument that counsel's representation was ineffective, Defendant has not proffered any sufficient prejudice to support an ineffective assistance of counsel claim.

²² *Strickland v. Washington*, 466 U.S. 668, 694 (1984).

²³ *Id.*

²⁴ *Albury v. State*, 551 A.2d 53, 57 (Del. 1988).

²⁵ *Smith v. State*, 571 A.2d 788 (Del. 1990) (TABLE).

²⁶ *Fullman v. State*, 560 A.2d 490 (Del. 1989) (citing *Little v. Allsbrook*, 731 F.2d 238, 239-40 n.2 (4th Cir. 1984)).

21. Defendant's Motion also fails regarding Defendant's apparent wish to withdraw his guilty plea. Defendant cannot demonstrate that the plea was involuntary when his own statements at the time of the plea repeatedly affirm the plea's voluntariness. Defendant must be bound by what Defendant said at the time of the plea because he has failed to demonstrate with clear and convincing evidence that his plea was involuntary.
22. Finally, regarding Defendant's abuse of discretion claim, Defendant argues that the trial Judge abused his discretion by not severing the charges as requested and by not removing defense counsel after Defendant expressed alleged "disdain and disadvantage."²⁷ Like all Defendant's claims, there is insufficient factual basis supporting any of Defendant's conclusory allegations of abuse of discretion.
23. Although Defendant provides no details in his Motion, the Court must assume that Defendant contends the Court abused its discretion by not granting Defendant's Motion to sever certain burglary charges in August 2010. Notably, an abuse of discretion claim is properly proffered on appeal, which Defendant chose not to pursue. "When an act of judicial discretion is under review the reviewing court may not substitute its own notions of what is right for those of the trial judge, if the judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness."²⁸
24. The Court based its denial of Defendant's motion to sever charges on sound legal reasoning. The Court concluded that the charges were properly joined and that Defendant failed to demonstrate sufficient prejudice requiring severance. The Court's decision on that motion does not constitute an abuse of discretion.
25. Regarding Defendant's claim that the Court abused its discretion by not replacing Defendant's counsel, it is notable that Defendant never addressed any dissatisfaction with trial counsel at the plea colloquy. Rather, Defendant affirmed that he was satisfied with his attorney's

²⁷ Def's M. for Postconviction Relief at 3.

²⁸ *Coleman v. PricewaterhouseCoopers, LLC*, 901 A.2d 1002, 1006 (Del. 2006) (citing *Chavin v. Cope*, 243 A.2d 694, 695 (Del. 1968)).

representation and that he was not forced into accepting his guilty plea. Defendant made no application requesting the replacement of his trial counsel at the colloquy.

26. Defendant's absolute bare bones Motion for Postconviction Relief only proffers conclusory and unsubstantiated claims. When analyzed substantively, Defendant's claims fail because they do not sufficiently allege ineffective assistance of counsel, judicial abuses of discretion, or the need to retract the guilty plea.

Therefore, Defendant's Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

oc: Prothonotary
cc: Investigative Services