

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
)
 v.) I.D. # 0503018603
)
)
RASHAUN J. MILLER,)
)
 Defendant.)

Date Submitted: October 22, 2007

Date Decided: February 4, 2008

OPINION

Defendant's Pro Se Motion for Postconviction Relief
DENIED.

Christopher D. Tease, Esq., 1232 N. King St, Suite 300, Wilmington, DE 19801.

Renee Hrivnak, Esq., Dept. of Justice, 820 North French St., Sixth Floor, Wilmington, DE 19801.

Rashaun J. Miller, Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware 19977, Defendant, *pro se*.

I. INTRODUCTION

The Defendant collaterally attacks his convictions for possession of cocaine and possession of drug paraphernalia. He claims that a Constitutional violation and ineffective assistance of counsel require this Court to grant a new evidentiary hearing. For the reasons set forth below, defendant's Constitutional claim is **SUMMARILY DISMISSED** and his ineffective assistance of counsel claim is **DISMISSED**.

II. BACKGROUND

On November 15, 2005, a jury convicted Defendant Rashaun Miller ("Miller") of possession of cocaine and possession of drug paraphernalia.¹ At the time of his arrest, Miller was serving a probationary sentence imposed by the Superior Court. On the drug charges, he was sentenced to two years at level V, suspended after one year, for six months at level III. On the probation violation, he was sentenced to three years at level V, followed by six months at level III. Miller appealed his drug convictions on March 13, 2006 and the Delaware Supreme Court affirmed on April 10, 2007.² On July 12, 2007, he filed this *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61.³ In his motion, Miller asserts four grounds for relief, three of which allege ineffective assistance of counsel.⁴

III. DISCUSSION

Before addressing the merits of a postconviction relief claim, the Court must first determine whether the claims pass through the procedural filters of Rule 61.⁵ To protect

¹ Jury Verdict, Docket Item ("D.I.") 12.

² *Miller v. State*, 922 A.2d 1158 (Del. Supr. 2007).

³ Mot. For Postconviction Relief ("Postconviction Motion"), D.I. 21.

⁴ *Id.*

⁵ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991) ("The first inquiry in any analysis of a post-conviction relief claim is whether the petition meets the procedural requirements of Rule 61.") *See also Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

the integrity of the procedural rules, the Court will not address the substantive aspects of the claims if a defendant's claims are procedurally barred. Rule 61(i) provides:

- (1) Time limitation. A motion for postconviction relief may not be filed more than one year after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court;
- (2) Repetitive motion. Any ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim is warranted in the interest of justice;
- (3) Procedural default. Any 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 the movant's rights;
- (4) Former adjudication. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice;
- (5) Bars inapplicable. The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall 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.

A. Probable Cause

Miller first claims that the police arrested him without sufficient probable cause. This argument fails for two reasons. First, Miller's initial detention did not amount to a full blown arrest that required probable cause.⁶ Second, the Delaware Supreme Court formerly adjudicated the legality of Miller's detainment

⁶ See *Miller*, 922 A.2d 1158.

on appeal⁷ and ruled that “the officers’ initial detention of Miller to enforce the loitering statute was lawful.”⁸ Consequently, this claim is procedurally barred under Rule 61(i)(4).⁹ Because Miller does not claim that this Court lacked authority to convict or punish him, he does not satisfy the “interest of justice” exception,¹⁰ and his claim is procedurally barred under Rule 61(i)(4).

Consequently, this claim is **SUMMARILY DISMISSED**.

B. Ineffective Assistance of Counsel

Miller’s remaining three grounds for relief are based on an allegation of ineffective assistance of counsel. This claim is not procedurally barred because a Rule 61 motion is the appropriate vehicle for such a claim, even when the claim has not been previously raised.¹¹ To prevail on this claim, Miller must meet the two-pronged *Strickland* test by showing that (1) counsel performed at a level “below an objective standard of reasonableness,” and (2) “the deficient performance prejudiced the defense.”¹² The first prong requires Miller to show by a preponderance of the evidence that the defense counsel was not reasonably competent, while the second prong requires Miller to show “that there is a reasonable probability that, but for defense counsel’s unprofessional errors, the result of the proceeding would have been different.”¹³ When a court examines a claim of ineffective assistance of counsel, it may address either prong first; where one prong is not met, the claim may be rejected without contemplating the

⁷ The record reflects that surveillance officers observed Miller and two acquaintances sitting on the steps of a vacant business building at 9 p.m., in a high drug area, for approximately twenty to thirty minutes. The Court found these facts sufficient to establish reasonable and articulable suspicion that Miller was loitering.

⁸ *Miller*, 922 A.2d at 1159.

⁹ Super. Ct. Crim. R. 61(i)(4).

¹⁰ Super Ct. Crim. R. 61(i)(5).

¹¹ See *Reynolds v. Ellingsworth*, 843 F.2d 712, 723 (3d Cir.1988), cert. denied, 488 U.S. 960 (1988).

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

¹³ *Id.* at 687-88, 694.

other prong.¹⁴ Here, the Court will address the first prong for each of Miller's three grounds for ineffective assistance of counsel.

a. Failure to file a Motion to Dismiss

Miller claims that his attorney was ineffective because he failed to file a motion to dismiss pursuant to Superior Court Criminal Rule 12.¹⁵ In particular, Miller states that he wrote his attorney a letter on November 6, 2005 requesting him to file a motion to dismiss. Defense counsel denies receiving this letter but acknowledges that it was filed with the Prothonotary's Office on September 27, 2005.¹⁶ Defense counsel submits that at the time of this letter, there was no basis to file such a motion because the Court had already violated Miller's probation and denied his motion to suppress evidence.¹⁷ Because Miller offers no other basis to support filing a motion to dismiss, he fails to establish that his attorney's performance was objectively unreasonable.

b. Failure to File a Motion to Suppress

Miller next claims that his counsel was ineffective because he failed to file a motion to suppress based upon the theory that the administrative search was unlawful. Before defense counsel began his representation, Miller was represented by Robert Goff, Jr., Esq. Mr. Goff filed a motion to suppress on May 5, 2005 based upon the theory that the police lacked reasonable suspicion to detain and question Miller.¹⁸ Miller contends that because this motion did not challenge the administrative search, defense counsel should have filed a second motion to challenge the admissibility of evidence seized as a

¹⁴ *Id.* at 697.

¹⁵ Super. Ct. Crim. R. 12.

¹⁶ Letter from Rashaun Miller to Christopher D. Tease, Esq. (Sept. 26, 2005), D.I. 8.

¹⁷ Counsel's Affidavit Pursuant to Superior Court Rule 61 (Tease's Resp.), D.I. 25.

¹⁸ Mot. to Suppress, D.I. 3.

result of the search and “other issues that could have been addressed.”¹⁹ At Miller’s violation of probation hearing, the Court ruled that, “[w]hen [the probation officer] learned that [Miller] has not reported a change of address, given the place where he is, a high drug area, given his convictions for drugs, there is ample grounds for them to ask for an administrative search warrant. I hold that search is valid.”²⁰ Defense counsel’s affidavit reflects that he did not file a motion to suppress because there was no good faith basis to contest the search after the Court’s ruling.²¹ His failure to file a motion to suppress based upon a valid search was not objectively unreasonable. Furthermore, Miller fails to identify any “other issues” that, if raised, would have afforded Miller a different outcome at trial. Because Miller fails to demonstrate error on the part of his counsel that resulted in prejudice to him, this claim fails.

c. Failure to Raise the Issue of Illegal Search and Seizure

For his final claim, Miller seems to reiterate the same argument set forth above. He claims that defense counsel was ineffective because he failed to argue that the administrative search was unlawful at the suppression hearing, trial or on direct appeal. To prevail on this claim, Miller must overcome a “strong presumption that counsel’s conduct was reasonable or could have been considered sound trial strategy at the time.”²² Defense counsel states, “[w]hile the issue was not raised on appeal, the arguments at trial centered on the fact that the defendant was not even residing at the address in question. Thus, at trial, standing was an issue. It is counsel’s belief that given the trial court’s

¹⁹ Postconviction Motion, D.I. 21.

²⁰ Tr. Suppression Hr’g R. at 57:1-6.

²¹ Tease’s Resp., D.I. 25.

²² *State v. Hammons*, 2004 WL 1874692 (Del. Super.), at *1 (citing *Strickland*, 466 U.S. 689).

ruling on the subject, it was not as strong an argument as those that were raised.”²³

Defense counsel’s decision was a reasonable tactical decision and as such, Miller fails to meet the first prong of the *Strickland* test.

Miller’s allegations regarding his attorney’s performance fail the first prong of *Strickland* because he fails to establish by a preponderance of evidence that his counsel’s conduct fell below reasonable professional standards. Consequently, his claim of ineffective assistance of counsel is **DISMISSED**.

* * *

For the above mentioned reasons, Miller’s Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61, is hereby **DENIED**.

IT IS SO ORDERED.

Jan. R. Jurden, Judge

²³ Tease’s Resp., D.I. 25.