

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

DAMION MILLS

Defendant

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CRIMINAL ACTION NUMBERS

IN-05-03-0640-R1

ID NO. 0502013242

Submitted: January 14, 2008

Decided: February 21, 2008

MEMORANDUM OPINION

*Upon Motion of the Defendant
for Post-Conviction Relief - **DENIED***

HERLIHY, Judge

Defendant Damion Mills has filed for postconviction relief. He pled to maintaining a vehicle for keeping or using controlled substances May 31, 2005, and was sentenced on that day. Two other companion charges were nol prossed. He was sentenced to two years in jail which were suspended immediately for one year at Level II probation. He later violated that probationary sentence and was given sixty days at the Violation of Probation Center on May 3, 2006. There was to be no probation to follow.

Mills raises three grounds for relief. Two are ineffective assistance of counsel: (1) failure to investigate circumstances of arrest and (2) failure to advise him of immigration consequences. His third ground for relief is that his plea was coerced by his lawyer, whom he alleges misled him.

Factual Background

Mills was originally arrested and indicted for possession with intent to deliver marijuana, using a vehicle for keeping controlled substances and possession of drug paraphernalia. These charges arose from what started as an informant tip that he was storing in and selling large quantities of marijuana from his Pebble Hill Apartments apartment. Later information came that Mills was to receive a large shipment of marijuana by means of UPS at 1814 Washington Street in Wilmington.

The informant also said Mills would be operating a silver/gray rental pick up with Pennsylvania tags. Surveillance was undertaken at both locations. A UPS truck showed up and delivered a large box to 1814 Washington Street. A little later the police observed

Mills leaving 1814 with the box and getting into a silver/gray pick up truck with a Pennsylvania tag. He was alone.

The police followed the pick up to the Pebble Hill Apartments. Mills was stopped in the apartment complex parking lot. The box was in plain view on the front seat. Mills consented to a search of his apartment where the police seized several scales capable of use for weighing drugs. They obtained a search warrant for the box and inside it, they found 4.5 pounds of marijuana. When stopped, the police advised Mills of his “Miranda”¹ rights. The police reported that Mills, when questioned after a waiver, said there was “weed” in the box.²

Procedural Posture

As noted, Mills pled guilty and was sentenced on May 31, 2005. He did not appeal. Since he did not appeal, his conviction became final thirty days later on June 30, 2005.³ That specific date is important because, effective July 1, 2005, the three year time limit for postconviction motions was reduced to one year for all convictions becoming final on July 1st or thereafter. Mills current motion, therefore, is controlled by the former three year window.

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966).

² This summary of the evidence comes from a very detailed affidavit of probable cause for the arrest warrant.

³ *Murphy v. State*, No. 377, 1998, (Del. October 26, 1998)(ORDER).

The underlying importance of these dates is that prior to considering Mills' motion, the Court is required to determine if there are any procedural bars to doing so.⁴ Here, there is no time bar applicable to consideration of Mills' motion and the Court finds no other potentially applicable bar.

Discussion

Mills' motion sets out three grounds for postconviction relief. One issue permeates all three, namely, he was unaware of the immigration consequences of his plea. Specifically, he makes several accusations of ineffective assistance of counsel: (1) counsel did not investigate the circumstances of his arrest, (2) counsel did not investigate the immigration consequences of certain convictions, (3) counsel did not seek to "minimize" those consequences, and (4) counsel "told" him to plead guilty because a judge would accept police testimony over his, Mills; if he went to trial. Mills also claims the Court never told him of any immigration consequences. In his motion he also now denies knowing the contents of the box.

The Court sent to counsel the claims which Mills made. Counsel responded. First, as to the immigration issue, counsel indicates Mills never mentioned the issue to him. In addition, counsel reports, Mills had a Delaware driver's license. There was nothing to alert counsel that any immigration consequences were present in this case.

⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

Counsel also reported to the Court that he had the detailed affidavit of probable cause accompanying the arrest warrant, the police report, and the toxicology report. He also forwarded to the Court a copy of his March, 2005, interview notes with Mills. In those notes, counsel recorded Mills' admission he knew what was in the box. Finally, counsel reports that he thoroughly reviewed with Mills everything on the TIS Guilty Plea form and that Mills knew exactly what he was doing.

After receiving counsel's response, the Court forwarded it to Mills on November 14, 2007. He was asked to respond by December 13, 2007.⁵ Since Mills is in prison, and at an out-of-state facility, the Court has given him more time to send any kind of response. To date, there has been no response.

The over-arching claim Mills makes is that he failed to understand or appreciate that there would be immigration consequences to his plea. He does not, however, indicate what immigration consequences he faced or is facing. His motion was mailed from the York County (PA) Prison but does not say why he is there or even if there is an ICE detainer or pending action. Nor does Mills state he would have taken all three charges to trial and not pled guilty had he known of immigration consequences.

As counsel points out, a conviction at trial or a guilty plea meant immigration consequences even if he, counsel, had known of such consequences. And here a

⁵ Superior Court Criminal Rule 61(g)(3).

conviction of at least the two most serious charges, both felonies, was extremely likely. The only witnesses were the surveilling police, the police who stopped Mills and seized the box, those who searched his apartment, and the toxicologist who analyzed the 4.5 pounds of marijuana. The police reports and arrest warrant affidavit make out a compelling case of guilt. Of course, there is no guarantee of that.

But these comments go to other complaints Mills raises. One is his attorney's failure to investigate. He does not specify where there was a failure or what might have happened if he had investigated. This claim is conclusory, and the Court will not consider conclusory claims.⁶

In short, as counsel states in his response, Mills faced immigration problems even if counsel had been aware of an issue about that. In addition, Mills signed a Truth In Sentencing Guilty Plea form which states:

NON-CITIZENS: Convictions of a criminal offense may result in deportation, exclusion from the United States, or denial of naturalization.

In the absence of clear and convincing evidence that he did not understand that statement, Mills is bound by it.⁷ Mills has offered no evidence that he did not understand what that language meant or that he failed to appreciate any consequences when he pled guilty. A compelling inference here is that he withheld his citizenship status from counsel,

⁶ *Bratcher v. State*, No. 311, 1998 (Del. November 10, 1998)(ORDER).

⁷ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

but again, it is very probable immigration consequences would flow from the extremely likely disposition of this case even if counsel had been informed.

The immigration issue and counsel's remarks about police credibility, are the only specific claims of counsel error which Mills makes. To prevail on a claim of ineffective assistance of counsel, Mills must satisfy two tests: (1) that counsel's conduct fell below an objective standard of reasonableness, and (2) but for such error, there is a reasonable probability he would have not pled guilty but would have gone to trial.⁸ There is a strong presumption that counsel representation was reasonable.⁹

On the immigration issue, Mills has utterly failed to demonstrate counsel error. Counsel had no reason to know or suspect there was an issue. To the contrary the record, including the Delaware driver's license, is enough to show there was not an issue known to counsel. Without counsel error, there can be no ineffectiveness.¹⁰

Mills contends ineffectiveness in the form of an alleged "coerced" plea, on the basis that counsel advised him a "judge" would accept the police testimony that he admitted to knowing the box's content over his now proffered denial of such knowledge. Accepting that at face value for the moment, the Court finds such a statement from counsel to be reasonable. Any experienced counsel, including counsel in this case, are aware of how

⁸ *Grosvenor v. State*, 849 A.2d 33, 35 (Del. 2004).

⁹ *Capano v. State*, 889 A.2d 968, 975 (Del. 2006).

¹⁰ *Ayers v. State*, 802 A.2d 278, 283 (Del. 2002).

judges and jurors usually come out when hearing such differences. Counsel would not be doing his professional duty to a client, here Mills, if that observation were not made. And, in the end, this belated denial of knowledge of the contracts contradicts the circumstances here and Mills' admission to counsel over two months prior to pleading guilty that he did know what was in the box.¹¹

There can be no counsel error under these circumstances.

In that there is an innuendo that Mills' guilty plea was otherwise coerced, there is not a scintilla of evidence he offers to support it.

Conclusion

For the reasons stated herein, defendant Damion Mills' motion for postconviction relief is **DENIED**.

J.

¹¹ Mills asserts the police lied when they say he admitting knowing the box's contents. That assertion seems to be premised in part on the statement not being on tape or in writing. As a result, he seems to argue, his admission would have been inadmissible a trial. This assertion based on that reasoning is without merit. And nowhere in his motion does he deny he was properly advised of and waived his rights to answer questions.