

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

STATE OF DELAWARE, ) CR.A.NOS.: IN06-06-0052-  
 ) R1; IN06-0035-RI  
 v. )  
 ) DEF. I.D.: 0605017836  
ALVIN BROOKS, )  
 )  
 )  
 Defendant. )

Date Submitted: December 7, 2007  
Date Decided: March 10, 2008

*Upon Consideration of Defendant's Pro Se  
Motion for Postconviction Relief.*

**DENIED.**

**ORDER**

This 10th day of March, 2008, upon consideration of the Motion for Postconviction Relief brought by Alvin Brooks ("Defendant"), it appears to the Court that:

1. On June 12, 2006, Defendant was indicted on fifteen felony counts, including three counts of Murder First Degree and one count of Attempted Murder First Degree.

2. The State timely indicated its intent to seek the death penalty against Defendant. On April 2, 2007, Defendant plead guilty to one count of Murder First

Degree and one count of Attempted Murder First Degree and the State withdrew its request for capital punishment. On June 8, 2007, Defendant was sentenced to life in prison without probation or parole. Defendant did not seek to withdraw his plea at any time prior to or after sentencing.

3. Defendant filed this *pro se* motion for postconviction relief on June 29, 2007. He raises four grounds for relief based on ineffective assistance of counsel: (1) his counsel coerced him into accepting the guilty plea and coerced his sister into encouraging Defendant to accept the plea; (2) his counsel never filed certain pre-trial motions he had requested, never sent him paperwork regarding his representation, and told Defendant that his grounds for defense were without merit; and (3) his counsel advised him to accept a guilty plea even though the evidence used to connect Defendant to the crimes was “dismissed” at the preliminary hearing.

4. On September 19, 2007, Defendant filed a supplemental motion for postconviction relief asserting three additional grounds, also based on ineffective assistance of counsel. In his supplemental motion, Defendant argues: (1) he requested a suppression hearing several times but his counsel never moved for one; (2) his “will was overborne” while he was being interrogated by the police because he was never given food, water or clothing and his counsel was ineffective for failing to move to suppress his statements;<sup>1</sup> and (3) his counsel never checked his alibi. This order will

<sup>1</sup> Docket Item (“D.I.”) 45, Defendant’s Motion for Postconviction Relief, at 3 (Sept. 16, 2007).

address both motions.

5. Rule 61(g)(2) permits the court to direct counsel to supplement the record in response to a defendant's claims of ineffective assistance of counsel. In light of Defendant's claims here, the Court requested Defendant's counsel to supply an affidavit as contemplated by Rule 61(g)(2). Counsel submitted affidavits on August 31, 2007<sup>2</sup> and September 4, 2007<sup>3</sup> in response to Defendant's initial motion and filed an additional affidavit in response to Defendant's supplemental motion on December 7, 2007.<sup>4</sup>

#### **A. Standard Of Review**

6. Before addressing the merits of any Postconviction claim, the Court must first determine whether the claims pass through the procedural filters of Rule 61.<sup>5</sup> To protect the integrity of the procedural rules, this Court will not address the substantive aspects of the claims if Defendant's claims are procedurally barred.<sup>6</sup> Rule 61 imposes four procedural imperatives on Defendant's motion: (1) the motion must be filed

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<sup>2</sup> Aff. of Defense Counsel 1.

<sup>3</sup> Aff. of Defense Counsel 2 .

<sup>4</sup> Aff. of Defense Counsel 3.

<sup>5</sup> See *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) ("This Court applies the rules governing procedural requirements before giving consideration to the merits of the underlying claim for postconviction relief.").

<sup>6</sup> *Id.*

within three years of a final order of conviction; (2) any basis for relief must have been asserted previously in any prior postconviction proceedings; (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. Under Rule 61(i)(5), a defendant may avoid the first three procedural imperatives if the claim is jurisdictional or is a “colorable claim that there was a miscarriage of justice because of a constitutional violation.”<sup>7</sup>

7. A judgment of conviction is final for the purposes of postconviction review under the following circumstances:

(1) if the defendant does not file a direct appeal, 30 days after the Superior Court imposes sentence; (2) if the defendant files a direct appeal or there is an automatic statutory review of a death penalty, when the Supreme Court issues a mandate or order finally determining the case on direct review; or (iii) if the defendant files a petition for certiorari seeking review of the Supreme Court’s mandate or order, when the U.S. Supreme Court issues a mandate or order finally disposing of the case on direct review.<sup>8</sup>

Defendant’s motion is timely and is not barred by any other procedural safeguards.

8. Challenges to the validity of guilty pleas based on ineffective assistance of counsel are governed by the two-prong test set forth in *Strickland v. Washington*.<sup>9</sup>

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<sup>7</sup> SUPER. CT. CRIM. R. 61(i)(5).

<sup>8</sup> SUPER. CT. CRIM. R. 61(m).

<sup>9</sup> *Albury v. State*, 551 A.2d 53 (Del. 1988).

That test requires the defendant to prove that “counsel’s representation fell below an objective standard of reasonableness” and “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.”<sup>10</sup> Evaluating counsel’s conduct begins with a “strong presumption” that the representation was reasonable. This presumption is meant to avoid the “the distorting effects of hindsight.”<sup>11</sup> To prevail on the prejudice prong of *Strickland* when challenging the acceptance of a guilty plea, the defendant must prove that he would have insisted on going to trial rather than pleading guilty had counsel not made the errors alleged.<sup>12</sup>

**B. Counsel’s Representation of Defendant Did Not Fall Below an Objective Standard Of Reasonableness.**

9. Defendant has failed to satisfy the first prong of the *Strickland* test. Defendant’s counsel acted within an objective standard of reasonableness in advising their client to accept the State’s offer of life in prison to avoid the possibility of a death sentence. The Court will not address the second prong of the *Strickland* test because Defendant must prove both prongs to prevail on an ineffective assistance

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<sup>10</sup> *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

<sup>11</sup> *Albury*, 551 A.2d at 59.

<sup>12</sup> *Id.* at 60.

claim, and the failure to prove the first prong is fatal to the entire claim.<sup>13</sup>

### 1. Coerced Plea

10. Defendant argues that he was coerced by his counsel into accepting the plea offered by the State. He claims that he repeatedly told his defense counsel that he did not want to plead guilty. Defense counsel states by affidavit that counsel explained to Defendant their strategy of seeking a plea agreement that would avoid the imposition of the death penalty early in the representation and that Defendant was in agreement with this strategy.<sup>14</sup> Defense counsel also stated that they wanted Defendant to begin considering a plea for a life sentence early in the process in the event defense counsel was able to secure such an offer from the State. Defendant never indicated his disagreement with this strategy to his defense counsel.<sup>15</sup> Counsel was very concerned that the State had persuasive, admissible evidence of Defendant's guilt and that the death penalty would be recommended by the jury.<sup>16</sup> When the State formally extended the offer of life in prison without probation, defense counsel arranged for a videophone conference between counsel, Defendant and his sister to discuss the plea offer.<sup>17</sup> Defendant's sister supported acceptance of the plea and stated

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<sup>13</sup> *Strickland*, 466 U.S. at 697.

<sup>14</sup> Aff. of Defense Counsel 1, at 4.

<sup>15</sup> *Id.*

<sup>16</sup> *See* Aff. of Defense Counsel 1, at 5-6.

<sup>17</sup> *Id.* at 5

to Defendant that “[w]e don’t need to bury another body.”<sup>18</sup> According to defense counsel, Defendant knowingly, intelligently and voluntarily accepted the State’s plea offer.<sup>19</sup>

11. Additionally, the Court engaged Defendant in a lengthy plea colloquy to confirm that he understood the consequences of his plea, that he understood the constitutional trial rights he would forfeit by accepting the plea, and also that he was knowingly, intelligently, and voluntarily entering the plea:

The Court: There are two documents that I need to discuss with you today. The first is your plea agreement, and the second is a truth in sentencing guilty plea form.

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The Court: Did you read them both carefully before you signed them?

The Defendant: Yes, sir.

The Court: And were you able to understand everything that was on these forms?

The Defendant: Yes, sir.

The Court: Did you understand what you were agreeing to by signing these documents?

The Defendant: Yes, sir.

The Court: And did you have an opportunity to review them

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

both carefully with your attorneys?

The Defendant: Yes, sir.

The Court: And did they answer any questions you might have had about these documents to your satisfaction?

The Defendant: Yes, sir.

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The Court: By entering these pleas of guilty, you give up all of these constitutional trial rights. Do you understand that?<sup>20</sup>

The Defendant: Yes, sir.

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The Court: Has anyone threatened you or coerced you in any way to accept these pleas of guilty?

The Defendant: No, sir.

The Court: Are you entering these pleas of guilty of your own free will because you believe it's in your best interest to do so?

The Defendant: Yes, sir.

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The Court: And you're satisfied that [your attorneys] have explained to you all of the benefits and the consequences of making this decision to enter these pleas of guilty?

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<sup>20</sup> The Court had previously reviewed each Constitutional trial right individually with Defendant to confirm that he understood each right.



The Defendant: Yes, sir.

The Court: At the end of the day, though, do you understand that only you can make this decision?

The Defendant: Yes, sir.

The Court: And is this decision to enter these pleas of guilty your decision?

The Defendant: Yes, sir.

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The Court: What is your plea to that charge [murder first degree]?

The Defendant: Guilty.

The Court: And did you, in fact, commit that offense?

The Defendant: Yes, sir.

This plea colloquy, in addition to the Truth-In-Sentencing Guilty Plea Form signed by Defendant, indicate that Defendant voluntarily waived his constitutional trial rights and was not coerced to do so by his trial counsel or anyone else. Further, Defendant has failed to provide the Court with any evidence of coercion that was exerted against Defendant or his sister by anyone, much less his own attorneys. Defense counsel have unequivocally denied that they coerced Defendant to accept the plea agreement.<sup>21</sup> Given the amount of time Defendant was given to contemplate his

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<sup>21</sup>Aff. of Defense Counsel 1, at 6, Aff. of Defense Counsel 2, at 1.

plea, his agreement with the plea negotiation strategy at the outset, and the discussions with counsel leading up to accepting the plea, the Court is satisfied that Defendant has failed to meet his burden under *Strickland* to establish that his counsel was ineffective in recommending that he accept the plea offered by the State.

## **2. Lack of Pre-Trial Motions**

12. Defendant alleges that his defense counsel was ineffective for failing to file a motion to suppress with this Court. He does not indicate specifically in his motion papers what evidence he wished to suppress. In their affidavit, defense counsel surmised that Defendant may be referring to a remorseful statement he made to a police detective following his arrest.<sup>22</sup> Defense counsel declined to move for suppression of this statement because there were no meritorious grounds to support suppression. Moreover, the statement indicated Defendant's remorse, which counsel believed, and Defendant agreed, may assist Defendant in procuring an offer of life without probation or probation, or in making a stronger case in mitigation at the penalty phase of the trial.<sup>23</sup> Further, in the plea colloquy referenced above, Defendant voluntarily and knowingly waived his constitutional right to challenge the evidence against him.

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<sup>22</sup> Aff. of Defense Counsel 3, at 2-3.

<sup>23</sup> *Id.* at 3.

13. Additionally, Defendant alleges that his “will was overborne” because he was not given food, water or clothing during the initial police interrogation and the air conditioner in the interrogation room was set on “full blast.” He argues that his counsel was ineffective for failing to move to suppress the product of this coercive interrogation.<sup>24</sup> Defense counsel investigated the circumstances surrounding Defendant’s statement and did not uncover evidence that would support a suppression motion. Defendant also never indicated to his defense counsel that he was physically or mentally abused, or deprived of food or water during the interrogation. Nor did he offer any additional grounds that would support such a suppression motion.<sup>25</sup>

### **3. Illegal Search, Seizure and Detention**

14. Defendant next argues that his counsel was ineffective for advising him to accept the guilty plea because the “facts that they used in court to connect [Defendant] to this case were dismissed in [the] preliminary hearing.”<sup>26</sup> The Court assumes Defendant means that the evidence used to link Defendant to charges that were dismissed in the Court of Common Pleas preliminary hearing could not later be used to support charges against him in the Superior Court. Defendant’s assertion is misplaced because dismissal of certain charges at the preliminary hearing in the Court

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<sup>24</sup> D.I. 45, at 3.

<sup>25</sup> Aff. of Defense Counsel 1, at 4.

<sup>26</sup> D.I. 42, at 3.

of Common Pleas did not guarantee that Defendant would not later be indicted on those same charges by the Grand Jury.<sup>27</sup> Additionally, dismissal of these charges does not bar the introduction of evidence relating to those charges at a subsequent trial.<sup>28</sup> Defense counsel explained these possibilities to Defendant.<sup>29</sup> Given the faulty legal premise upon which Defendant's assertion of ineffective assistance is based, Defendant's claim fails as a matter of law.

#### **4. Defendant's Alibi**

15. Finally, Defendant alleges that his counsel was ineffective for failing to investigate his alibi. This claim is not substantiated by the record. Defendant failed to provide defense counsel with any information regarding an alibi. In fact, Defendant initially informed defense counsel that he had been staying in a vacant building on East 13<sup>th</sup> Street in Wilmington, Delaware and repeated this information in subsequent interviews.<sup>30</sup> The address provided by Defendant was the location of the murder for which Defendant plead guilty. Additionally, no other witnesses interviewed by defense counsel provided information regarding an alibi. Defendant has not

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<sup>27</sup> Del.Com.Pl. R. 5.1(b) (“The discharge of the defendant shall not preclude the State from instituting a subsequent prosecution for the same offence.”).

<sup>28</sup> See Del.Com.Pl. R. 5.1(b)

<sup>29</sup> Aff. of Defense Counsel 1, at 7.

<sup>30</sup> Aff. of Defense Counsel 3, at 5.

demonstrated that his defense counsel's actions fell below an objective standard of reasonableness and therefore has not satisfied the standard set forth in *Strickland*.<sup>31</sup>

16. Based upon the foregoing, Defendant's motion for postconviction relief is **DENIED**.

**IT IS SO ORDERED.**

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Judge Joseph R. Slights, III

Original to Prothonotary

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<sup>31</sup> See *State v. Jordan*, 1994 WL 637299, at \*3 (Del.Super.Ct. Jun.23, 1994)(“This Court need not address Postconviction Relief claims that are conclusory and unsubstantiated.”).