IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	CRIMINAL ACTION NUMBERS
v.	)	
	)	IN-07-06-00435-R1
ALANDER WILLIS	)	
	)	
Defendant	)	ID NO. 0705027052

Submitted: February 1, 2008
Decided: February 15, 2008

MEMORANDUM OPINION

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

HERLIHY, Judge

Defendant Alander Willis moves for postconviction relief claiming he was denied effective assistance of counsel at sentencing.

Willis appeared on the Court's Fast Track calendar on June 20, 2007. He had been arrested on May 24, 2007 for possession with intent to deliver cocaine, maintaining a dwelling for keeping illegal drugs and several other drug misdemeanor charges. At the time of his arrest, he was serving three Superior Court probationary sentences. A Fast Track proceeding is designed to address, if possible, new charges in this Court's jurisdiction for a defendant who is serving any probationary sentence(s) from this Court.

On June 20th Willis pled guilty to the single charge of maintaining a dwelling for keeping illegal drugs. The plea also encompassed an admission to violating (for obvious reasons) the three probationary sentences he was serving on May 24, 2007 when arrested on the maintaining offense.

The Plea Agreement he signed, and which in the plea colloquy he acknowledged he understood, not only noted the above but had a sentencing recommendation from the State. On the new charge, the State recommended a three year jail sentence suspended after eighteen months; eighteen months of Level III probation would follow. On the VOPs, the State recommended thirty days at the Violation of Probation Center on each of the three. The Court made sure Willis knew that (1) the maximum sentence he could get on the new charge was three years and (2) the Court was not bound by the State's recommendation. Willis also signed a Truth in Sentencing Guilty Plea form on which it is noted (1) the

maximum sentence is three years and (2) no one had promised him what his sentence would be.

After Willis and his counsel spoke about sentencing, the Court sentenced Willis to three years in jail to enter the Key drug treatment program while incarcerated. Once successfully completed, he was to go to Level IV Crest followed by Level III Crest Aftercare. Willis' oldest probationary sentence was from early 2005. He was discharged as unimproved from that sentence. On the two other remaining probationary sentences the Court gave him one year jail sentences suspended for one year at Level III concurrent with each other and concurrent with the Level III portion of the maintaining sentence.

Five months after being sentenced to Key, Willis wrote the Court to do something about a problem with or disqualification from continuing Key. The Department of Correction, according to his letter, had taken some disciplinary action against him for an incident while in Key. His resumption in Key might be delayed or he may be disqualified altogether from continuing. The Court saw no basis for taking action. That letter was Willis second motion for modification of sentence. In the first, also denied, he mentions among other things, his wife and children.

Willis' complaint against the attorney who represented him at the Fast Track hearing is that the attorney did not object to the three year Key sentence when he, Willis, expected an eighteen months sentence. Willis asserts counsel should, after objecting, have argued mitigation because of his family situation, primarily children and Willis' own difficult background, including parents addicted to cocaine.

Discussion

There is no procedural impediment to consideration of Willis' motion.[1] To establish a claim of ineffective assistance of counsel, Willis must show (1) counsel's representation fell below an objective standard of reasonableness and that (2) counsel's deficiencies caused him actual prejudice.[2] Willis has made the requisite specific claim of ineffectiveness.[3] Despite making a specific allegation, it, nevertheless, lacks merit. There are several reasons. First as the TIS form which he signed indicates, no one promised him an eighteen months jail sentence. Despite his expectation that eighteen months was all he would get, Willis is bound by the TIS form he signed.[4] When questioned during the verbal plea colloquy, Willis acknowledged that the Court was not bound by the State's recommendation. He is bound by that response, too.[5]

Most importantly, there was no counsel error here. On May 16, 2007 Willis was sentenced on a new charge of possession of cocaine which was committed in April 2007. On the same day he was sentenced for violating the two probationary sentences he was serving when the new offense was committed. One of those two was possession of cocaine

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[1] *Stone v. State*, 690 A.2d 924 (Del. 1996).

[2] *Gattis v. State*, 697 A.2d 1174, 1178 (Del. 1997).

[3] *Zebrowski v. State*, 822 A.2d 1038, 1043 (Del. 2003).

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

[5] *Tolliver v. State*, 1997 WL 683297 (Del.).

within 300 feet of a park. On May 16th, it was Willis' (an early '05 sentence) fourth VOP sentence on that charge. It was his third VOP on the other charge, conspiracy to maintain a vehicle for keeping illegal drugs (an offense committed in 2006). The newest charge was committed a mere eight days after he had been found in violation of all three of his probationary sentences on May 16, 2007. The Court had examined and considered all three prior sentences and his Presentence file when sentencing him on June 20th.

The point is that even if counsel had objected and/or offered the "mitigating" evidence Willis now offers, the Court's sentences, with the above background, would not have changed. There can be no counsel error under these circumstances.[6]

The "prejudice" of discontinuation, or delay in reentering or disqualification from Key, based on Willis' own letter is self-inflicted and cannot be blamed on counsel. The motion lacks merit.

Conclusion

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

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J.

[6] *Johnson v. State*, 813 A.2d 161, 167 (Del. 2001).