

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

STATE OF DELAWARE,)
)
 v.)
)
WILLIAM SEAN DAHL,) I.D. No. 9909017710
)
 Defendant.)
)

Submitted: February 5, 2008
Decided: March 6, 2008

On Defendant William Sean Dahl's Motion for
Postconviction Relief. **DENIED.**

MEMORANDUM OPINION

William Sean Dahl, Defendant, *Pro Se*

JOHNSTON, J.

PROCEDURAL CONTEXT

On April 4, 2006, Dahl, was convicted of Loitering by a Sex Offender within 550 Feet of a School in violation of 11 *Del. C.* § 1112(a)(2).

On July 28, 2006, Dahl was sentenced to: (1) 3 years at Level V for the loitering charge; (2) 17 years at Level V as an habitual offender; and (3) 8 years at Level V, suspended after 3 years for 8 months at Level IV, followed by 8 years at Level III, for violating probation.

On May 15, 2007, the Delaware Supreme Court overturned Dahl's loitering conviction. After finding Dahl's other arguments to be without merit, the Supreme Court reversed on the narrow technicality that the dance academy was not a "school" as that term has been defined by the General Assembly.¹

¹ *Dahl v. State*, 926 A.2d 1077, 1083-84 (Del. 2007) ("Although it is certainly possible that a dance studio may meet the statutory definition of a school, the State failed to produce sufficient evidence to prove that essential element in this case. The State was required to prove that the *primary purpose* of the Dance Academy was to educate or instruct children under the age of 16. Because 'primary purpose' is not defined by the statute, we must look to the commonly accepted meaning of the term. 'Primary' has been defined as 'first or highest in rank, quality, or importance; principal.' 'Purpose' has been defined as 'the object toward which one strives or for which something exists; an aim or goal.' In other words, the State was required to prove that the principal object of the Dance Academy was to teach children under 16. The only evidence of the purpose of the Dance Academy in the record is the testimony of Mrs. Pate, who testified as follows:

Q: Okay, and what type of business is conducted there?
A: We teach dance lessons.

Mrs. Pate also explained who her own students were as follows:

On June 19, 2007, the Superior Court on remand entered a judgment of acquittal on the loitering charge. The Superior Court did not modify the violation of probation sentence. On February 5, 2008, Dahl filed a *pro se* motion for postconviction relief alleging: (i) abuse of discretion; (ii) excessive sentencing; and (iii) ineffective assistance of counsel.

STANDARD OF REVIEW

In evaluating a postconviction relief motion, the Court must first ascertain if any procedural bars of Superior Court Criminal Rule 61(i) apply.² If a procedural bar is found to exist, the Court should refrain from

Q: And who do you teach dance lessons to?

A: Children. Actually, I teach ages 2 to adult myself.

Q: 2 to Adult.

A: Uh-huh.

Q: On Saturdays, at around lunchtime, was there a particular group that would be getting education and learning how to dance?

A: Yes. We were putting on the Nut Cracker, so we had like rehearsals at that time.

Q: Okay, and how old were the children on Saturdays at around lunchtime?

A: They ranged from 7 to probably 13.

Based on this testimony, it is apparent that both children *and adults* receive dance instruction at the Dance Academy from more than one instructor. Although Mrs. Pate teaches children, the Dance Academy's business is to teach dance lessons. The State's argument that the Dance Academy is a 'school' as defined by the statute because Mrs. Pate taught children under the age of 16 *on Saturdays* is unavailing. A focus upon the activities of one teacher on one day of the week without more, does not show that the primary purpose of the Dance Academy was to educate or instruct children under 16. At a minimum, the evidence (or lack thereof) raised a reasonable doubt as to whether the Dance Academy was a 'school' as defined by 11 *Del. C.* § 1112.”).

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

considering the merits of the individual claims.³ This Court will not address claims for postconviction relief that are conclusory and unsubstantiated.⁴

Pursuant to Rule 61(a), a motion for postconviction relief must be based on “a sufficient factual and legal basis.” According to Rule 61(i)(1), a postconviction relief motion may not be filed more than a year after judgment of conviction is final or one year after a newly-discovered, retroactively-applicable right is recognized by the United States Supreme Court or the Delaware Supreme court. Pursuant to Rule 61(b)(2): “[T]he motion shall specify all the grounds for relief which are available to movant..., and shall set forth in summary form the facts supporting each of the grounds thus specified.”

Any ground for relief not asserted in a prior postconviction relief motion is thereafter barred unless consideration of the claim is necessary in the interest of justice.⁵ Grounds for relief not asserted in the proceedings leading to the judgment of conviction are thereafter barred, unless the movant demonstrates: (1) cause for the procedural default; and (2) prejudice

³ *See id.*

⁴ *See id.* at 555.

⁵ Super. Ct. Crim. R. 61(i)(2).

from violation of movant's rights.⁶ Any formerly-adjudicated ground for relief, whether in a proceeding leading to the judgment of conviction, in an appeal, or in a postconviction proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.⁷

ANALYSIS

Ground (i). Dahl argues that “since he was acquitted of the predicate charge to which the violation of probation attached, then the violation should have been negated as well.” Dahl claims no evidence was offered at trial demonstrating Dahl violated probation. Dahl believes the Court committed an abuse of discretion by upholding Dahl's sentence for violating probation.

Delaware Courts characterize probation as an “act of grace.”⁸ A judge has broad discretionary power when deciding whether probation should be revoked.⁹ During a violation of probation hearing, the State must only prove by a preponderance of the evidence that a violation has

⁶ Super. Ct. Crim. R. 61(i)(3).

⁷ Super. Ct. Crim. R. 61(i)(4).

⁸ *Collins v. State*, 897 A.2d 159, 160 (Del. 2006).

⁹ *Id.*

occurred.¹⁰ The State need only present “some competent evidence” to “reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation.”¹¹

In 2000, Dahl pled guilty to 10 counts of possession of child pornography. On March 24, 2000, Dahl was sentenced to 12 years at Level V (suspended for probation after 3 years). As a condition of Dahl’s probation he was to have no contact with children or persons under 21 years of age. Dahl was released on December 2, 2004, to Level IV home confinement. During May of 2005 Dahl was allowed to leave his home on Saturdays from 12:00-2:00 to look for employment.

On a Saturday in May, at approximately 12:30, Dahl went to the picnic area of a pizza parlor next to the New Castle County Dance Academy. On Saturdays, the Dance Academy only taught children between the ages of 7 and 13. The children walked to and from the pizza parlor before and after dance classes. Dahl went to the picnic area to watch the children. The dance instructor had seen Dahl watching her students on previous occasions. Dahl’s presence made the children uncomfortable. Dahl was confronted by

¹⁰ *Jenkins v. State*, 2004 WL 2743556, at *3 (Del.).

¹¹ *Collins*, 897 A.2d at 160.

the dance instructor's husband, but refused to leave. The instructor reported the incident to the Delaware State Police. Dahl was subsequently arrested.

Dahl was charged with and convicted of Loitering by a Sex Offender within 550 Feet of a School in violation of 11 *Del. C.* § 1112. The Delaware Supreme Court overturned Dahl's loitering charge finding there was insufficient evidence "to establish that the dance school was a 'school,'" as defined by 11 *Del. C.* § 1112. However, the Supreme Court found there was sufficient evidence to establish that Dahl was loitering within 500 feet of the dance school.¹²

The evidence presented at trial proved that Dahl used the limited freedom given to him in May of 2005, to repeatedly and intentionally linger near and leer at young children. Dahl's presence was ominous enough to cause the dance instructor and children alarm. Instead of seeking employment, the only purpose for which Dahl was permitted 2 hours release from home confinement, Dahl went directly to a place he knew would be in close proximity to little children in dance costumes. The Court was more than "reasonably satisfied" that Dahl had violated the condition of his probation that he have no contact with children.

¹² *Dahl v. State*, 026 A.2d 1077, 1082-84 (Del. 2007).

Dahl alleges the Superior Court erred by not providing Dahl with a written notice of the alleged violation as required by Superior Court

Criminal Rule 32.1(a). Pursuant to Rule 32.1(a):

Whenever a person is taken into or held in custody on the grounds that the person has violated a condition of partial confinement or probation...[t]he person shall be given: (A) Written notice of the alleged violation; (B) Disclosure of the evidence against the person; (C) An opportunity to appear and to present evidence in the person's own behalf; (D) The opportunity to question adverse witnesses; and (E) Notice of the person's right to retain counsel and, in cases in which fundamental fairness requires, to the assignment of counsel if the person is unable to obtain counsel.

Dahl's violation of probation charge was based on the same facts and evidence presented during trial. Dahl was loitering for the sole purpose of having prohibited contact with children. Dahl admits his attorney advised him that "if he was convicted on the charge – then there would be a violation of probation." Therefore, the Court finds Dahl was given notice of the alleged violation; he was aware of the evidence against him; he had an opportunity to present evidence that in May of 2005 he did not loiter near children; and he had competent and effective counsel, at State expense.

Ground (ii). Dahl argues he was sentenced excessively for his violation of probation. Dahl claims the Court exceeded its authority when it sentenced Dahl to Level V, stating: "In this case it would be at the most an

increase to Level IV.” Additionally, Dahl claims the Court displayed an apparent closed mind while imposing his sentence.

The Court can consider whether the sentence is excessive due to judicial vindictiveness, bias or a closed mind.¹³ “A judge sentences with a closed mind when the sentence is based on a preconceived bias without consideration of the nature of the offense or the character of the defendant.”¹⁴

The sentence for violation of probation was based upon objective factors. The Court considered Dahl’s lengthy criminal history and his character as a repeat sex offender. In 1989, Dahl was convicted of Unlawful Sexual Contact in the 1st Degree and Unlawful Sexual Contact in the 3rd Degree. In 1996, Dahl violated probation. In 1998, Dahl was convicted of Unlawful Sexual Contact in the 3rd Degree. In 1999, Dahl was indicted on more than 20 charges of Dealing in Child Pornography. Dahl pled guilty to 10 counts and the State dismissed the remaining charges. While in prison in 2000, Dahl was indicted on three counts of Unlawful Sexual Contact with a minor and sentenced to 2 years.

¹³ *Weston v. State*, 832 A.2d 742, 746 (Del. Supr. 2003).

¹⁴ *Id.*

According to sentencing guidelines, when a violation of probation has occurred, “it is presumed that the offender may move up only one [SENTAC] level.” However, the Court may increase the sentence, if it finds: (1) the behavior of the offender represents an immediate threat to the community or an identified victim; and (2) the behavior of the offender is repetitive and flagrantly defies the authority of the court.

Dahl is a registered sex offender and has a history of sex-related convictions involving children. Dahl has a history of violating probation. In 2005, Dahl demonstrated an inability to follow or take seriously the conditions of his probation. The Court is convinced that Dahl’s character and his conduct in 2005 demonstrate that he is a continuing threat to society. The Court found, based upon Dahl’s repeated conduct, that if released into the community, he will in all probability flagrantly disregard the conditions of his probation and will continue to be a predator, targeting and victimizing young children. Therefore, the Court finds that the violation of probation sentence was not excessive.

Ground (iii). Dahl alleges he was denied his 6th Amendment right to effective assistance of counsel. Dahl claims his defense counsel should not have stipulated to Dahl’s violation of probation charge.

To prevail on a claim of ineffective assistance of counsel, a defendant must show: (1) that counsel’s errors were so grievous that counsel’s performance fell below an objective standard of reasonableness; and (2) actual prejudice, that is, that there is a reasonable degree of probability that but for counsel’s errors, the outcome of the proceedings would have been different.¹⁵

In making a claim of ineffective assistance of counsel, a defendant must make and substantiate concrete allegations of actual prejudice or risk summary dismissal.¹⁶ Although the *Strickland* standard is a two-part test, the showing of prejudice is so central to this claim that “[i]f it is easier to dispose of an ineffective claim on the ground of lack of sufficient prejudice, which we expect will often be so, that source should be followed.”¹⁷ In other words, if the Court finds that there is no possibility of prejudice even if a defendant’s allegations regarding counsel’s representations were true, the claim may be dismissed on this basis alone.

¹⁵ *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Albury v. State*, 551 A.2d 53, 58 (Del. 1988).

¹⁶ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990); *Robinson v. State*, 562 A.2d 1184, 1185 (Del. 1989).

¹⁷ *Strickland*, 466 U.S. at 697.

Dahl alleges his counsel was ineffective for lack of preparation and failure to investigate the entirety of the case. Specifically, Dahl argues his counsel stipulated to the violation of probation even though there was no evidence of a violation.

The Court found ample evidence that a violation of probation had occurred and sentenced Dahl according. Thus, Dahl cannot demonstrate that he was prejudiced, *i.e.*, that the outcome of the case would have been different if his counsel had objected to the violation of probation claim. The Court finds Dahl's counsel was not ineffective for stipulating to the violation.

CONCLUSION

Dahl has failed to demonstrate that any of his Rule 61 claims have substantive merit. **THEREFORE**, Dahl's Motion for Postconviction Relief is hereby **DENIED**.

IT IS SO ORDERED.

The Honorable Mary M. Johnston