

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

STATE OF DELAWARE,

v.

JEROME SULLINS,

Defendant.

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ID. No. 0405017780

Submitted: March 12, 2008

Decided: April 25, 2008

OPINION

*Defendant's Motion for Postconviction Relief.
Granted in Part Dismissed in Part.*

Appearances:

Jerome Sullins, Pro Se.

Martin O'Connor, Esquire, Wilmington, Delaware.
Deputy Attorney General.

JOHN E. BABIARZ, JR., JUDGE.

Defendant Jerome Sullins has filed a motion for postconviction relief from his 2006 convictions for Trafficking in Cocaine in Excess of 50 Grams, Possession of Cocaine and related charges. He alleges five instances of ineffective assistance of trial counsel. The Court finds that Defendant correctly asserts that double jeopardy is implicated by his conviction for both Trafficking in Cocaine¹ and simple Possession.² Both convictions pertain to the same two bags of crack cocaine, and the elements of proof for simple possession do not include any element that is not contained in the elements of proof for trafficking. Defendant's other allegations are without merit. The motion is therefore granted in part and dismissed in part.

Facts. The relevant facts are straightforward. In April 2004, Wilmington Police Department officers entered Defendant's residence based on an informant's tip that Defendant was dealing drugs. The search revealed two bags of crack cocaine and an electronic scale, all of which Defendant acknowledged to be his. He was arrested and charged with five offenses. At trial, the jury acquitted him of Resisting Arrest, and found him guilty of Trafficking and Possession of Drug Paraphernalia. As to the charge of Possession with Intent to deliver, Defendant was found guilty of the lesser-included offense of simple Possession.

¹Del. Code Ann. tit. 11, § 4553A(2)(b).

²Del. Code Ann. tit. 11, § 4753.

Strickland v. Washington. To prevail a claim of ineffective assistance of counsel, Defendant must meet the two-part *Strickland* test, which requires first a showing that counsel's representation fell below an objective standard of reasonableness and second that there is a reasonable probability that but for this conduct the result of the proceedings would have been different.³

Grounds for relief. Defendant asserts first that trial counsel failed to file a timely motion for a *Flowers* hearing. In the first trial, a mistrial was declared because of a *Flowers* issue, so Defendant cannot show that he was prejudice by the lack of a pre-trial motion. In the second trial, there was no *Flowers* issue, so Defendant cannot show that counsel's conduct was not professionally reasonable. This claim has no merit.

Defendant's second assertion is that counsel failed to move to suppress the evidence seized in the course of the search of his home conducted by his probation officers. Defendant states that the search was subterfuge for a generalized search of his home. He does not give any particulars as to either which evidence should have been suppressed or what effect the suppression would have had on the trial. The record shows that when police officers and probation officers entered Sullins' house, they found \$1630 on his person and two and ½ ounces of crack cocaine pushed down

³*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

the bottom of a vent. The only other item they found was an electronic scale typically used to measure exact amounts of drugs. Sullins admitted the drugs belonged to him. The items seized were all related to the informant's tip that the officers were investigating, and it does not follow that the search was generalized. Defendant seems to object to the fact that his probation officers were present, but the record shows they were there because the police officers notified them of the tip, and they had a professional interest in being present. This claim has no merit.

Defendant's next contention is that defense counsel failed to seek a reduced sentence because of the assistance he provided to the police. The trafficking charge carries a 4-year minimum mandatory sentence, pursuant to Del. Code Ann. tit. 16, § 4753A. As a maximum sentence, the trafficking is a class B felony, which is punishable up to 25 years Level 5 time, pursuant to Del. Code Ann. tit. 11, § 4205. Defendant was sentenced to 15 years suspended after 10 years at Level 5 for 18 months of Level 3 probation. Defendant has not shown how assistance to police officers would have affected this sentence, nor has he shown that defense counsel had an duty to file a motion for modification, since the sentence itself was legal and was lawfully imposed. A sentencing judge has broad discretion to consider an array of factors in determining an appropriate sentence as long as the sentence is within the

statutory limits.⁴ The claim as to a modification of sentence has no merit.

Finally, Defendant correctly asserts that double jeopardy prohibits convictions of both Trafficking in Cocaine and Possession. The crime of simple Possession⁵ does not contain any element of proof not present in Trafficking.⁶ Defendant's conviction for Possession therefore must be merged with the conviction for Trafficking. The Court will vacate Defendant's sentence for Possession and issue a new sentencing order that will remain unchanged in every other way.

Defendant's motion for postconviction relief is ***Granted in Part*** and ***Dismissed in Part***.

It Is So ORDERED.

Judge John E. Babiarz, Jr.

JEB,jr/bjw/ram
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⁴*Mayes v. State*, 604 A.2d 1992 (Del.).

⁵Del. Code Ann. tit. 11, § 4753.

⁶Del. Code Ann. tit. 11, § 4553A(2)(b).