

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

STATE OF DELAWARE)	CR.A.NOS.: PN06-06-0445
)	
v.)	
)	DEF. I.D.: 0605024607
EDWARD ADAMS,)	
)	
Defendant.)	

Date Submitted: May 1, 2008
Date Decided: July 9, 2008

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

ORDER

This 9th day of July, 2008, upon consideration of the Motion for Post-conviction Relief brought by Defendant, Edward Adams (“Defendant”), it appears to the Court that:

1. On January 29, 2007, Defendant pleaded guilty to the lesser-included charge of Criminally Negligent Homicide, in return for which the State dropped one count of Manslaughter and two counts of Reckless Endangerment in the 1st Degree. On March 23, 2007, Defendant was sentenced to 5 years of Level V incarceration, to

be suspended after 3 years for a period of probation.

2. Defendant appealed his conviction and sentence, and raised in his brief three issues for the Supreme Court's consideration. Defendant claimed that his sentence was improper because it: (1) exceeded the sentencing guidelines as well as the prosecutor's recommendation; (2) was based upon the Superior Court's misapprehension of the facts of the case; and (3) imposed an unreasonable condition.

3. On December 10, 2007, the Supreme Court affirmed the judgment of the Superior Court, concluding that Defendant's appeal "is wholly without merit and devoid of any arguably appealable issue."¹ In coming to this conclusion, the Court reasoned that Defendant's 5 year term did not exceed the statutory maximum allowable for the crime committed, that the sentencing judge had not misapprehended any issue of fact in arriving at his sentencing decision, and that "given the particular circumstances of the victim's death the Superior Court was within its discretion in imposing the conditions it did."²

4. Defendant filed this *pro se* motion for postconviction relief on January 24, 2008. He raises three constitutional grounds for relief: (1) that a change in the sentencing date is evidence of ineffective assistance of counsel; (2) that his guilty

¹ Docket Item (D.I.) 23, Supreme Court decision, at 4-5 (Dec. 10, 2007).

² D. I. 23, at 4.

plea was coerced based upon an alleged promise made by defense counsel that the State would prosecute a third party following Defendant's plea; and (3) that the State's failure to pursue prosecution of the aforementioned third party constitutes a violation of the Equal Protection Clause of the 14th Amendment.³

A. Standard of Review

5. Before addressing the merits of any postconviction relief motion, the Court must first determine whether the claims pass through the procedural filters of Superior Court Criminal Rule 61 ("Rule 61"). To protect the integrity of the procedural rules, the Court will not address the substantive aspects of the claims if Defendant's claims are procedurally barred.⁴ Rule 61 imposes four procedural imperatives on Defendant's motion: (1) the motion must be filed within one year 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 not asserted in the proceedings below as required by the court rules is subsequently barred unless defendant can show cause and prejudice; and (4) any ground for relief must not have been formerly adjudicated in any proceeding unless warranted in the interest of

³ Defendant also claims that counsel's failure to raise this issue on appeal constitutes ineffective assistance of counsel. This assertion is refuted in the later section detailing Defendant's misinterpretation of the Equal Protection Clause.

⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990)(It is well-settled that the Superior Court and this Court must address the procedural requirements of Rule 61 before considering the merits of this motion).

justice. Under Rule 61(i)(5), a defendant may avoid the first three procedural imperatives if the claim is jurisdiction or is “a colorable claim that there was a miscarriage of justice because of a constitutional violation.”⁵

6. 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.⁶

Defendant’s conviction was finalized on December 10, 2007, when the Supreme Court issued the final order on the matter. A motion for postconviction relief was filed on January 24, 2008. Defendant’s motion is timely and is not barred by any other procedural safeguards.

7. Guilty plea challenges based on ineffective assistance of counsel are governed by the two-prong test set forth in *Strickland v. Washington*.⁷ That test requires the defendant to prove that “counsel’s representation fell below an objective

⁵SUPER. CT. CRIM. R. 61(i)(5).

⁶SUPER. CT. CRIM. R. 61(m).

⁷*Albury v. State*, 551 A.2d 53, 58 (Del. 1988)(citing *Hill v. Lockhart*, 474 U.S. 52, 58 (1985)).

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.”⁸ Evaluating counsel’s representation begins with a “strong presumption” that it was reasonable in order to avoid “the distorting effects of hindsight.”⁹ To prevail on the second prong 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.¹⁰

B. Counsel’s Representation of Adams Did Not Fall Below The Objective Standard Of Reasonableness.

8. Defendant has failed to satisfy the first prong of the *Strickland* test. Defense counsel acted within the objective standard of reasonableness in advising Defendant to plead guilty to the State’s offer of the lesser-included charge. The Court will not address the second prong of the test because Defendant must prove both prongs to prevail on an ineffective assistance claim and the failure to prove one prong is fatal to the entire claim.

1. Change in the Date of Sentencing.

9. There is no merit to Defendant’s claim that a change in the sentencing

⁸*Strickland v. Washington*, 466 U.S. 668, 688 (1984).

⁹*Albury*, 551 A.2d at 59.

¹⁰*Id.*, at 60.

date is evidence of ineffective assistance of counsel. The fact that the Court moved the sentencing to a later date had no effect on Defendant's guilt or innocence in this matter or in the sentence he received.¹¹ Counsel accepting the Court's change of the sentencing date is in no way evidence of "continual incompetence"¹² as claimed by Defendant. The allegation is frivolous.

2. Coerced Plea

10. Defendant's claim that his guilty plea was coerced is without merit. On January 29, 2007, Defendant signed the Plea Agreement and Truth-In-Sentencing Guilty Plea Form in which he confirmed that he was knowingly, voluntarily and intelligently waiving his right to a jury trial, to cross examine witnesses, to present his own defense and to appeal his conviction. He also confirmed that he had not been promised anything not set forth in his plea agreement, and that he had not been forced to enter his pleas of guilty. The Court then engaged Defendant in a lengthy colloquy to confirm that he understood the consequences of the plea and the constitutional trial rights he would forfeit by accepting the plea:

The Court: There are two documents that I need to review with

¹¹ The record indicates that the sentencing date was moved from April 5, 2007 to March 23, 2007.

¹² D.I. 24, Motion for Postconviction Relief, at 3.

you. The first is your plea agreement. The second is a Truth-in-Sentencing guilty-plea form. Do you have those there in front of you?

The Defendant: Yes, sir.

The Court: Both of these documents appear to be signed by you at the bottom of the page; is that correct?

The Defendant: That's correct, sir.

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

The Defendant: Yes, sir.

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

The Defendant: Yes, sir.

The Court: Did you have an opportunity to review them both with [your attorney]?

The Defendant: Yes, sir.

The Court: Did he answer any questions that you might have had about them to your satisfaction?

The Defendant: Yes, sir.

The Court: The plea agreement I have indicates that you will be entering a guilty plea to the lesser-included offense of Count I of the indictment, which now charges Criminally Negligent Homicide. In exchange for your plea of guilty to [the] charge, the State has agreed to dismiss the remaining counts in the indictment against you. Is that your understanding?

The Defendant: Yes, sir.

The Court: That appears to be the *entire agreement* that you reached with the State of Delaware; is that correct?

The Defendant: That is correct, sir.

The Court: Do you understand that by entering this plea of guilty, you're not going to have a trial in this case and, therefore, you're going to give up all the constitutional rights associated with the trial?

The Defendant: Yes, sir.

The Court: Have you reviewed those rights carefully with [counsel]?

The Defendant: Yes, sir.

The Court: And is it your intention to give up those constitutional trial rights as set forth there by virtue of your plea of guilty to this charge?

The Defendant: Yes, sir.

The Court: Do you understand that this is a felony charge and, therefore, you're going to be giving up certain civil rights?

The Defendant: Yes, sir.

The Court: Have you had a chance to review those carefully with [counsel]?

The Defendant: Yes, sir. He reviewed them with me.

The Court: Is it your intention to give up those civil rights by entering a plea of guilty to the felony charge?

The Defendant: Yes, sir.

The Court: Has anyone promised you in this case what sentence

you will receive?

The Defendant: No, sir.

The Court: Has anyone *threatened or coerced* you in any way to accept this plea of guilty?

The Defendant: No, sir.

The Court: Are you entering this plea of guilty *of your own free will [because you] believe it's in your best interests to do so?*

The Defendant: I believe it's in my best interests, sir, yes.

The Court: This is being entered *of your own free will?*

The Defendant: Yes, sir.

The Court: What is your plea to that charge [after reading the amended indicted charge of criminally negligent homicide]?

The Defendant: Guilty.

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

The Defendant: Yes, sir.

The Court: The Court is satisfied that the plea has been entered knowingly, intelligently, and voluntarily, will accept the plea and defer sentencing to March 30.¹³

11. This plea colloquy reveals clearly that Defendant entered his guilty plea knowingly and voluntarily and was not coerced to do so by trial counsel or anyone else. There is nothing in this plea colloquy, or otherwise in the record, to suggest the plea was entered in return for a promise that a third party would be prosecuted for some other charge in the future.

C. Equal Protection Violation

12. Defendant claims that by failing to prosecute a third party for allegedly stabbing him during the incident that led to his conviction the State somehow has violated the rights afforded him by the Equal Protection Clause of the 14th Amendment. Defendant has misinterpreted the purpose and function of the Equal Protection Clause. The function of the Equal Protection Clause “is to measure the validity of classifications created by state laws.”¹⁴ “The Constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the State’s

¹³ D.I. 20 (emphasis supplied).

¹⁴*Siebold v. University of Delaware*, 1975 WL 4178 (Del. Ch. 1975).

objectives.”¹⁵

13. There is nothing in this matter suggesting that the state applied (or misapplied) the law based upon some type of classification. Defendant was not prosecuted for the criminal charge of Criminally Negligent Homicide because of his membership in a particular class of citizens. Defendant was prosecuted for this charge because on May 26, 2006, he backed his vehicle over 19 year-old Amber Burnett, causing her death.

14. Defendant seems to believe that because he was prosecuted for this crime while another was not prosecuted for a crime allegedly committed against him that he was somehow deprived of equal protection under the law. This is simply a misinterpretation of the law. Not only is the record devoid of evidence that the State ever committed to prosecute this third party, it is also devoid of evidence that any decision not to prosecute was made based upon any constitutionally impermissible motivation. Defendant’s claim of a violation of his 14th Amendment Equal Protection rights is wholly without merit.¹⁶

15. Based upon the foregoing, Defendant’s motion for postconviction relief and request for court appointed counsel are **DENIED**.

¹⁵*McGowan v. Maryland*, 366 U.S. 420, 425 (1961).

¹⁶ Because the Defendant’s equal protection claim lacks merit, his counsel cannot have been ineffective for not raising the issue on appeal.

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to Prothonotary