

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

STATE OF DELAWARE)	
)	
v.)	ID No. 0406015383
)	
RANDY MATHIS,)	
)	
Defendant.)	

Submitted: April 15, 2008
Decided: July 30, 2008

On Defendant's Motion for Postconviction Relief. DENIED.

ORDER

Colleen K. Norris, Esquire, Department of Justice, 820 N. French Street,
Wilmington, Delaware, 19801. Counsel for State of Delaware.

Joseph M. Bernstein, Esquire, 28703 Alessandria Circle, Bonita Springs, Florida,
34135. Counsel for Randy Mathis.

CARPENTER, J.

On this 30th day of July, 2008, upon consideration of Defendant's Motion for Postconviction Relief it appears to the Court that:

1. On August 20, 2007 Mr. Mathis ("Defendant") filed the present Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61). For the reasons set forth below, Defendant's Motion for Postconviction Relief is **DENIED**.

2. The Defendant's arrest and subsequent conviction stem from a fight on June 12, 2004 between the Defendant and the victim in this case, Ronnie Hollingsworth, who robbed Defendant at gunpoint two days prior.¹ When the victim's brother, Ronsheen Hollingsworth, arrived at the scene of the fight he saw the Defendant was armed with a gun. Ronsheen intervened and the Defendant put his gun away. The victim, who was unarmed, threw a punch at Defendant, who proceeded to pull out his gun and shoot the victim twice, killing him. After he was arrested, the Defendant confessed that he shot Hollingsworth, but claimed he acted in self defense.

¹ A more detailed factual recitation can be found in the Delaware Supreme Court's decision affirming Mathis's conviction in *Mathis v. State*, 907 A.2d 145 (Del. 2006).

3. The Defendant was indicted on charges of first degree murder and possession of a firearm during the commission of a felony. After a jury trial, Defendant was convicted of Murder Second Degree, and the weapons offense. The Defendant was sentenced to 25 years at Level 5, followed by decreasing levels of supervision. The Supreme Court affirmed Defendant's convictions and a mandate was issued on September 15, 2006. Subsequently, the Defendant's counsel filed the timely postconviction motion presently before the Court. At the Court's request, Defendant's attorney for trial, Eugene J. Maurer, Jr., Esquire, ("Counsel") filed an affidavit in response to the claims of ineffective assistance of counsel.

4. Prior to addressing into the merits of a postconviction claim, the Court must first determine that the Motion meets the procedural requirements of Rule 61(i).² After reviewing the Defendant's present Motion, the Court finds that the claims contained therein only allege ineffective assistance of counsel, which is not generally subject to the procedural bars of Rule 61(i).³ Therefore, the Court will address the Defendant's substantive arguments.

²*Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) (citing *Harris v. Reed*, 489 U.S. 255, 265 (1989)).

³*State v. Denston*, 2003 WL 22293651 at *3 (Del. Super. Oct. 2, 2003)(noting that "an allegation of ineffective assistance of counsel is a type of claim not subject to the procedural default rule, in part because the Delaware Supreme Court will not generally hear such claims for the first time on direct appeal unless the claim was adequately raised in the lower court.").

5. To prevail on a claim of ineffective assistance of counsel, a defendant must meet the two-part test set forth in *Strickland v. Washington*.⁴ First, the Defendant must establish that counsel’s representation fell below an objective standard of reasonableness, and second, that a reasonable probability exists that the outcome of the proceeding would have been different but for counsel’s error.⁵ As to the first prong, whenever evaluating the conduct of counsel, the Court must indulge “a strong presumption that counsel’s conduct was professionally reasonable.”⁶ As to the second prong, a reasonable probability is defined as “a probability sufficient to undermine confidence in the outcome” of the proceeding.⁷

6. The Defendant’s sole claim is that his counsel was ineffective for failing to raise a claim of “imperfect self defense” and failing to request an instruction pursuant to 11 Del. C. § 470, which states:

When the defendant believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such relief would establish a justification under §§ 462-468 of this title but the defendant is reckless or negligent in having such belief...

⁴466 U.S. 668 (1984).

⁵*Wright v. State*, 608 A.2d 731 (Del. 1992), citing *Albury v. State*, 551 A.2d 53, 58 (Del. Super. 1988).

⁶*Albury v. State*, 551 A.2d 53, 59 (Del. 1998).

⁷*Strickland*, 466 U.S. at 693-94.

the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.⁸

In other words, the Defendant claims that had counsel argued this theory to a jury, and had the jury accepted it, he would have been convicted of Manslaughter instead of Murder Second Degree.

7. The Court finds the Defendant's claim fails both prongs of the *Strickland* test. First, counsel's failure to argue an alternative theory to the jury does not qualify as "deficient conduct" under *Strickland*. In his affidavit, counsel states that,

the defendant made clear it was his position that he was not guilty of the offense due to the fact that he was justified in shooting the victim in that he believed that the force that he used was 'necessary to protect the defendant against death, serious physical injury... See 11 *Del. C.* § 464(c).'⁹

Based on his discussions with his client, counsel formed a strategy to meet the Defendant's express desire for a not guilty verdict from the jury.¹⁰ Counsel made a tactical decision not to focus significantly on lesser included offenses, because that

⁸11 *Del. C.* § 470(a)

⁹Maurer Aff. at ¶8.

¹⁰*Id.* at ¶9.

would have, in counsel’s words, “erode[d] counsel’s credibility in the primary argument articulated in the case.”¹¹

The *Strickland* Court noted that “strategic choices made after thorough investigation of the law and facts relevant to plausible options are virtually unchallengeable.”¹² The Defendant is correct that merely invoking the word “strategy” is insufficient to explain away an error by counsel. However, it appears from counsel’s affidavit that he made strategic decisions after careful consideration of the facts and the law, and after discussing them with his client,¹³ all of which are presumed reasonable under the high standard set forth by *Strickland*.

8. Defendant’s claim also fails the second prong of *Strickland*. The Defendant is correct that in order to prove prejudice, he need not show that absent counsel’s conduct, he would have been found not guilty, rather, he must show that due to counsel’s unreasonable conduct, the reliability of the proceeding has been called into question.¹⁴ Defendant argues that counsel’s decision not to request a

¹¹*Id.* at ¶11.

¹²*Strickland*, 466 U.S. at 690.

¹³Maurer Aff. at ¶¶7-8.

¹⁴Def.’s Motion at 9 (citing *Strickland* 466 U.S. at 694).

Section 470 instruction was an “ignorance or oversight,” that led to an unreliable outcome at trial.¹⁵ The Court disagrees.

9. Section 470 is perhaps one of the worst written statutes in the Delaware Code, probably because of the difficult concept it is trying to convey. However, the commentary to the Delaware Code is particularly helpful in explaining the application of the statute when it stated the following:

As has often been stated in the foregoing Commentary, the sections on justification look only to the actor’s belief in the necessity of force and not to the reasonableness of that belief. Subsection (a), therefore, is designed to cover the situation in which the actor is reckless or negligent in forming a belief as to the necessity for force. It provides that when the actor is so reckless or negligent, he may be held guilty of any crime which may be committed recklessly or negligently. If, for example, the actor is reckless in forming his belief that deadly force is being employed against him, he may be convicted of manslaughter, but not of murder. Because manslaughter may be committed recklessly, he has no defense; subsection (a) specifically deprives him of it...Thus, while the actor would have a defense to a crime requiring intention, he is guilty of recklessness and may be convicted of any crime requiring that state of mind.

Interestingly, in spite of not specifically requesting the Court to instruct on this statute, the jury’s decision in effect has mooted the harm now alleged by the Defendant. Under the commentary above, if the jury found the Defendant was

¹⁵Def.’s Motion at 8.

reckless or negligent in forming a belief as to the necessity for the use of force, he could only be found guilty of a criminal offense that required that particular state of mind. In this case, the jury's decision to convict the Defendant of Murder Second Degree required them to find that the Defendant's conduct was in fact reckless and not intentional. The fact that the jury also found the additional requirement that the conduct manifested a cruel, wicked and depraved indifference to human life does not change the reckless mental state requirement. Therefore, even if counsel had requested the jury to be instructed under Section 470, there is nothing to suggest the outcome of the trial would be different or that the jury's decision is unreliable. In other words, he received the benefit of Section 470 when the jury considered and found him guilty of the lesser included offense which involved a reckless mental state. The Court also finds that if it had been requested to give the instruction under Section 470, it would have instructed the jury that the options available to them if they found reckless conduct would have included Murder Second Degree and not just Manslaughter as now argued by the Defendant.

As a result, not only were trial counsel's decisions appropriate and reasonable, his failure to specifically request a Section 470 instruction had no effect on the outcome of the case and would have been harmful and inconsistent with his efforts

to obtain an acquittal of the Defendant. The Court finds trial counsel's conduct was consistent with the requirements established under *Strickland*.

10. For the reasons set forth above, the Defendant's Motion for Postconviction Relief is hereby DENIED.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.