SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

April 10, 2008

N440 - State Mail
Terrence J. Teagle
Delaware Correctional Center
Attention: Records
1181 Paddock Road
Smyrna, DE 19977

RE: Defendant ID No. 0510015293 (R1)

Dear Mr. Teagle:

The Court has received your first Motion for Postconviction Relief. After reviewing the transcript of your guilty plea (no contest), the transcript of your hearing seeking to withdraw your guilty plea, your *pro se* motion to withdraw your guilty plea, and the Supreme Court's decision affirming this Court's denial of your motion to withdraw your plea, I find that your present motion should be denied.

PROCEDURAL BAR REVIEW

This is your first Motion for Postconviction Relief. You filed it within one year of the return of the mandate from the Supreme Court (April 20, 2007) and therefore it is timely.

Claims of ineffective assistance of counsel are usually only permitted pursuant to a Rule 61 application. On direct appeal, the Supreme Court does not consider attacks against a defendant's attorney who represented him at the adjudication of guilt. As will be discussed below, due to the reasons you sought to withdraw your plea, Superior Court and then the Supreme Court have already adjudicated your claims of ineffective assistance of counsel.

As to your other complaints as to why your guilty plea should be vacated, these complaints could have and should have been raised earlier. In other words, the Court is denying your present motion because Rule 61(i)(4) bars consideration of previously adjudicated issues. Also, Rule 61(i)(3) bars the presentation of issues which you could have presented to the Superior Court and then to the Supreme Court on direct appeal but did not. You have not established good cause for not

doing so nor actual prejudice. Neither the interest of justice, nor miscarriage of justice exceptions are implicated in your motion.

BACKGROUND

You were charged with multiple counts of robbery in the first degree and weapons offenses.

At your final case review, you were aware of the State's position that if convicted at trial, the habitual offender statute would result in extremely lengthy sentences because any sentence on a violent felony had to begin at the statutory maximum for that offense. If convicted of robbery in the first degree and if you were an habitual offender as to that offense, your sentence had to begin at 25 years. 11 Del. C. §831, 4214(a), 4205.

On the morning of trial, you entered a guilty plea by way of a no contest plea to possession of ammunition by a person prohibited, possession of a firearm during the commission of a felony and two counts of robbery in the first degree. Pursuant to negotiations, the habitual offender statute would only be applied to the person prohibited offense. You were aware that the Court does not usually entertain plea negotiations on the morning of trial, but an exception was made for you due to the very serious consequences to you if the jury returned a jury verdict of guilty.

When you entered your plea, you were informed that the minimum sentence possible was nine (9) years. This was wrong because your prior record triggered a higher minimum sentence of eleven (11) years. After learning this, the State, with the consent of the Court and the Defendant,[1] nolle prosed one of the robberies to which you had pled guilty, thereby the minimum was reduced to eight (8) years.

This mistake benefitted you by a reduction in the minimum sentence from nine (9) years to eight (8) years. With the benefit of a presentence investigation, you were sentenced to twenty (20) years of incarceration followed by probation.

Relevant to the present motion is that you filed a *pro se* motion to withdraw your guilty plea. Your lawyer wrote you a letter as to why he could not support the motion. You chose to publish that letter by including it in your pleadings, thereby waiving your attorney-client confidentiality privilege.

The letter reviews communications between you and your attorney as to why you allegedly held out to the morning of trial to take the plea. The reason was allegations of witness intimidation or tampering, i.e. $1,000.00 offered to a witness to not appear at your trial.

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[1]You also complain that the attorney who was representing you as to the motion to withdraw your plea was ineffective for agreeing to the nolle pros. I do not find an attorney who agrees with a robbery in the first degree charge being dropped, reducing the maximum possible sentence by 25 years, is objectively ineffective. Nor have you shown prejudice.

New counsel was appointed and you pursued the motion to withdraw your guilty plea under Superior Court Criminal Rule 32(d) "fair and just" standard.

You attacked your previous attorney for being ineffective, misinforming you, for pushing you into taking the plea, and for a laundry list of other complaints, including the injection of race issues.

After a hearing, the Court determined that you had failed to present a fair and just reason to withdraw your plea. The Court determined that you had not established that your attorney was ineffective in any manner under the standard of *Strickland v. Washington*, 466 U.S. 668 (1984).

The Supreme Court affirmed the bench ruling denying the motion to withdraw. Specifically the Supreme Court decided it agreed with this Court's reasons and that there was no abuse of discretion.

What is now before the Court are the same attacks being made as to why you should now be permitted to withdraw your plea, but now under Superior Court Criminal Rule 61. The claims of ineffective assistance of counsel include failure to inform the Defendant of the consequences of the guilty plea, misinforming the Defendant about the time he would receive, using racial prejudice to push or force the Defendant to plead guilty, and a failure to investigate and be prepared for trial.

This Court and the Supreme Court have previously adjudicated the issues concerning ineffective assistance of counsel and whether you were fully aware of the enhanced sentencing triggered by the habitual offender statute as well as the penalty for robbery and possession of a firearm during the commission of a felony. The motion repeating these claims is procedurally barred under Rule 61(i) (4).

As noted in the denial of your Rule 32(d) Motion, your attorney acknowledged discussions with you concerning race issues. Because you are African-American and the victims were white, there was discussion of potential voir dire questions to the jury panel to explore any possible prejudice on the part of jurors. It was proper for your attorney to discuss these issues with you. Based on your testimony and his testimony at the Rule 32(d) hearing on August 25, 2006, I do not find that your attorney forced you to plead guilty because of race issues.

At the time of the plea colloquy, you informed the Court you would be truthful, you acknowledged no promises had been made and you knew the maximum sentence. There is no merit in your claim that you were promised a sentence but did not get the benefit of your bargain.[2]

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[2]No matter how disgruntled you may be as to the sentence imposed, I believe that based on the evidence the Court became aware of at the Rule 32(d) hearing and the presentence report, that your attorney did a commendable job in reducing your exposure to a de facto life sentence.

You also argue that pursuant to the federal code, you did not have proper notice of the enhanced penalty which might be applicable under the habitual offender statute. The record evidences you were aware of the habitual offender statute at least by your final case review. The plea at issue was entered a week later and you advised the Court you were aware of the consequences of your prior record triggering the habitual offender sentence. This claim was not specifically raised under the Rule 32(d) motion to withdraw the guilty plea but it nevertheless is barred by Rule 61(i)(3) in that you have not offered cause for not raising this claim earlier, nor any prejudice. Alternatively, the federal code does not dictate the notice requirements for Superior Court as to when the habitual offender statute might be applied to a defendant's sentence in the State Courts of Delaware.

As to allegations your attorney was not prepared for trial, this claim is denied because the claim is conclusory; you reported to the Court at the entry of the plea that you were satisfied with your attorney; and that this was your personal decision to plead guilty and you were not being forced to plead guilty. The transcript of the motion to withdraw hearing also evidences your attorney's efforts to assist you as well as your delay as to some critical matters. You have not established your attorney was not prepared for trial and you have not established prejudice.

As to any interest of justice or miscarriage of justice, I can only note that the evidence proffered at the August 25, 2006 hearing was overwhelming. The testimony also provides a strong inference that the only evidence as to any miscarriage of justice was your attempt to have family and friends intimidate or "buy off" a State's witness.

The procedural bars must be applied and your motion is denied.

IT IS SO ORDERED.

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

THG:baj
cc: Prothonotary
Department of Justice