

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

STATE OF DELAWARE,)	
)	
v.)	I.D. # 0604003788
)	
)	
GERMAINE DOLLARD,)	
)	
Defendant.)	

Date Submitted: August 15, 2008
Date Decided: August 29, 2008

OPINION

Defendant's Pro Se Motion for Postconviction Relief
DENIED.

On this 29th day of August, 2008, it appears to the Court that:

1. On October 10, 2006, Defendant Germaine Dollard (“Dollard”) pled guilty to Trafficking in Cocaine and Possession with Intent to Deliver Cocaine.¹ The Court sentenced Dollard on January 5, 2007 to 4 years at Level V on the Trafficking charge and 8 years at Level V suspended after 3

¹ Plea Agreement, Docket Item (“D.I.”) 17.

years on the Possession with Intent to Deliver charge.² On May 29, 2008, Dollard filed the current *pro se* postconviction motion.³

2. Prior to addressing the substantive merits of any claim for postconviction relief, the Court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61 (“Rule 61”).⁴ If the procedural requirements of Rule 61 are not met, in order to protect the integrity of the procedural rules, the Court should not consider the merits of a postconviction claim.⁵

3. Dollard claims that he received ineffective assistance of counsel and his convictions for both Trafficking and Possession with Intent to Deliver violate double jeopardy. He asks this Court to resentence him so that he may file an appeal with the Delaware Supreme Court.

4. Dollard’s ineffective assistance of counsel claim is not procedurally barred because a Rule 61 motion is the appropriate vehicle for such a claim, even when it has not been previously raised.⁶ The Court’s analysis of an ineffective assistance of counsel claim is governed by the two-part test set forth in *Strickland v. Washington*.⁷ Under *Strickland*, the

² Sentence Order, D.I. 20.

³ Motion for Postconviction Relief, D.I. 28.

⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). See also *Bailey v. State*, 588 A.2d 1121, 1127 (Del. Super. 1991).

⁵ *State v. Gattis*, 1995 WL 790961, at *2 (Del. Super. 1995) (citing *Younger*, 580 A.2d at 554).

⁶ See *Reynolds v. Ellingsworth*, 843 F.2d 712, 723 (3d Cir.1988), cert. denied, 488 U.S. 960 (1988).

⁷ 466 U.S. 668 (1984).

defendant must show that (1) counsel performed at a level “below an objective standard of reasonableness,” and (2) “the deficient performance prejudiced the defense.”⁸ The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires him to show “that there is a reasonable probability that, but for defense counsel's unprofessional errors, the result of the proceeding would have been different.”⁹

5. Dollard claims that defense counsel was ineffective for three reasons. First, he claims that defense counsel failed to pursue the suppression of evidence seized from the truck. Defense counsel states in her affidavit that she filed a suppression motion on July 12, 2006.¹⁰ She claims that she explained to Dollard that he had no standing to contest the search of the truck because he was not the owner or occupant of the truck and that his chances of success at trial were slim because of his audio taped confession. She also explained to Dollard that if he chose to go forward with his motion to suppress, the State would not make a plea offer and that he would be facing a minimum of 8 years to life on the Trafficking charge alone. Dollard offered to provide information to the Wilmington Police and the State agreed that Dollard could “work off” his charges in prison if he agreed to withdraw

⁸ *Strickland*, 466 U.S. 668.

⁹ *Id.* at 687-88, 694.

¹⁰ Motion to Suppress, D.I. 9.

his motion to suppress. Dollard was reluctant to do so but indicated to defense counsel that he had no other choice given the evidence against him and his criminal history. Accordingly, defense counsel withdrew Dollard's motion to suppress on September 20, 2006. Dollard fails to establish that defense counsel's performance in negotiating a favorable plea bargain that necessitated the dismissal of the motion to suppress fell below an objective standard of reasonableness.

6. Dollard next claims that defense counsel was ineffective for failing to inform him of his right to appeal his sentence. This claim is contradicted by the Truth-in-Sentencing Guilty Plea Form signed by Dollard wherein he represented to the Court that he was satisfied with defense counsel's representation and he acknowledged that he understood he was waiving his right "to appeal to a higher court."¹¹ Dollard offers no explanation why he should not be bound to his answers on the guilty plea form.¹² Therefore, this claim is without merit.

7. Dollard next claims that defense counsel was ineffective for failing to pursue a defense concerning who had actual control over the drugs found in the truck. Defense counsel states in her affidavit that she met with Dollard several times and explained that due to his taped confession his

¹¹ Truth-in-Sentencing Guilty Plea Form, D.I. 17.

¹² See *State v. Reyes*, 1996 WL 280874 (Del. Super.) ("In the absence of clear and convincing evidence to the contrary, Defendant is bound by his signed statement on a guilty plea form.").

chances of an acquittal were slim. Furthermore, defense counsel states that the police could present Mr. Whittaker at trial to prove that Dollard possessed four ounces of cocaine and that he was going to deliver them. Defense counsel's performance in negotiating a plea offer under these circumstances did not fall below an objective standard of reasonableness.

8. Dollard's final claim is that he cannot be sentenced for both Trafficking in Cocaine and Possession with Intent to Deliver Cocaine because those offenses have the same elements and therefore his sentencing on both charges violates double jeopardy. Although this claim is time barred under Rule 61(i)(1),¹³ the Court will briefly address the merits in the interest of justice. Under Delaware law, the same conduct of a defendant may not establish the commission of more than one offense if "it is established by the proof of the same or less than all the facts required to establish the commission of the offense charged..."¹⁴ Delaware Courts have consistently held that Trafficking in Cocaine and Possession with Intent to Deliver Cocaine are not barred by double jeopardy because Trafficking requires proof of *possession* and *quantity*, while Possession with Intent to Deliver

¹³ Pursuant to Super. Ct. Crim. R. 61(i)(1), a postconviction motion that is filed more than one year after judgment of conviction is procedurally time barred. Under Rule 61(m)(1), a conviction is final for the purpose of this rule thirty days after sentencing, unless a direct appeal is filed in that time frame. Because Dollard waived his right to direct appeal, his conviction became final on February 5, 2007.

¹⁴ See 11 *Del. C.* § 206(a)(1) and 206(b)(1).

requires proof of *possession* and the *intent to deliver*.¹⁵ Since both of these charges require proof of different facts, neither offense is included in the other. Accordingly, Dollard's convictions for Trafficking in Cocaine and Possession with Intent to Deliver Cocaine do not violate double jeopardy.

WHEREFORE, Defendant's motion for postconviction relief is **DENIED**.
IT IS SO ORDERED.

Jan R. Jurden, Judge

¹⁵ See *State v. Geller*, 1987 WL 8690 (Del. Super.); *State v. Hefton*, 586 A.2d 1195 (Del. Super.); *State v. McNair*, 2003 WL 21241355 (Del.).