

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

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 0607013529
	)	
JOHN MILLER,	)	
	)	
Defendant.	)	

Submitted: May 23, 2008  
Decided: August 27, 2008

**On Defendant's *Pro Se* Motion for Postconviction Relief. DENIED.**

**ORDER**

Ipek K. Medford, Esquire, Department of Justice, 820 North French Street,  
Wilmington, Delaware 19801.

John Miller, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna,  
Delaware 19977. *Pro se.*

**CARPENTER, J.**

On this 27<sup>th</sup> day of August, 2008, upon consideration of Defendant's Motion for Postconviction Relief it appears to the Court that:

1. On February 6, 2008 John Miller ("Defendant") filed a *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). At the request of the Court, Defendant's trial attorney, Edward C. Pankowski, Jr., Esquire ("Counsel"), filed an affidavit in response to Defendant's allegations. For the reasons set forth below, Defendant's Motion for Postconviction Relief is **DENIED**.

2. On December 5, 2006 the Defendant entered a guilty plea to one count of Terroristic Threatening and two counts of Misuse of Prisoner Mail, and was sentenced on March 16, 2007 as an habitual offender to a total of five years incarceration, followed by decreasing levels of supervision. The Defendant represented himself *pro se* on his direct appeal to the Supreme Court, which affirmed his conviction and sentence.<sup>1</sup> Subsequently, the Defendant filed this timely motion for postconviction relief, wherein he asserts one claim - that he was "threatened into taking [a] plea and [he] was afraid to say anything."<sup>2</sup>

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<sup>1</sup>See *Miller v. State*, 2007 WL 4336198 (Del. Dec. 12, 2007).

<sup>2</sup>Def.'s Motion at 1.

3. Prior to delving into the merits of a postconviction relief claim, the Court must first determine that the motion meets the procedural requirements of Rule 61(i).<sup>3</sup> Pursuant to Rule 61(i)(3), any ground for relief that was not asserted in the proceedings below is barred unless the movant shows cause for relief and prejudice from violation of the movant's rights.<sup>4</sup> Defendant never raised the issue of coercion or threats relating to his acceptance of a plea offer in his prior appeal, and for that reason the claim is procedurally defaulted.<sup>5</sup> Furthermore, Defendant has failed to articulate "some external impediment" which prevented him from raising such a claim on his direct appeal, nor has he demonstrated a "substantial likelihood" that the outcome would have been different had the issue been raised.<sup>6</sup>

4. Even if Defendant's claim was not procedurally defaulted, it is still without merit. The Defendant asserts he was threatened into accepting a plea bargain, yet he failed to reveal this during numerous opportunities prior to his acceptance of the plea. First, the Defendant executed a "Truth-in-Sentencing Guilty Plea Form," with Counsel,<sup>7</sup> where Defendant noted his voluntary decision to plead guilty to the

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<sup>3</sup>*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)).

<sup>4</sup>Super. Ct. Crim. R. 61(i)(3).

<sup>5</sup>*See Miller v. State*, 2007 WL 4336198, at \*1 for a summary of Defendant's claims on direct appeal.

<sup>6</sup>*See Younger v. State*, 580 A.2d 552, 556 (Del. 1990); Super. Ct. Crim. R. 61(i)(3).

<sup>7</sup>Pankowski Aff. at ¶5.

charges and that he was not forced or threatened to enter the plea. In addition, to ensure the plea was voluntary, knowing and intelligent, the Court conducted a colloquy prior to accepting the plea. During the plea colloquy the following exchange took place:

THE COURT: Have there been any threats or anybody forced you to do this?

THE DEFENDANT: No.<sup>8</sup>

Finally, during Defendant's lengthy allocution at sentencing, at no point did he mention being threatened into accepting the plea agreement.<sup>9</sup> The Defendant is bound by both the statements he made on the TIS Form and by the statements he made to the Court unless he presents clear and convincing evidence otherwise.<sup>10</sup> Finally, since the Defendant represented himself on appeal, certainly if the Defendant believed he was forced to accept the plea, that matter would have been argued by him since he was before the Court that could resolve the alleged "conspiracy" against him. The argument was not made by the Defendant since no such threat existed and the Defendant is now simply creating facts in a desperate attempt to reverse the admission he previously made.

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<sup>8</sup>Tr. of Plea, Dec. 4, 2006 at 7.

<sup>9</sup>Tr. Sentencing, Mar. 16, 2007 at 6-27.

<sup>10</sup>*State v. Wilson*, 2001 WL 392357, at \*3-4 (Del. Super. Ct.) (citations omitted).

5. For the foregoing reasons, due to his procedurally defaulted claim and his failure to show cause and prejudice to overcome the default, the Defendant's Motion for Postconviction Relief is hereby denied.

IT IS SO ORDERED.

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Judge William C. Carpenter, Jr.