IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 0701023107
	)	
SHANNON SHOWELL,	)	
	)	
Defendant.	)	

Submitted: August 6, 2008
Decided: November 24, 2008

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

MEMORANDUM OPINION

Shawn E. Martyniak, Deputy Attorney General, Wilmington, Delaware 19801.
Counsel for State of Delaware.

Shannon Showell, Sussex Correctional Institution, Georgetown, Delaware 19947.
Pro se.

CARPENTER, J.

On this 24th day of November 2008, upon consideration of Defendant's Motion

for Postconviction Relief, it appears to the Court that:

1. Shannon Showell (the “Defendant”), has filed a *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”), to which the State has responded. At the request of the Court, the Defendant’s trial attorney, Christopher S. Koyste, Esquire, filed an affidavit refuting the allegations of ineffective assistance of counsel. For the reasons set forth below, the Defendant’s Motion for Postconviction Relief is **DENIED**.

2. The Defendant was indicted on June 1, 2004 on three counts of Possession of a Firearm By a Person Prohibited, Possession of a Destructive Weapon (identified as a sawed-off shotgun), two counts of Possession of Ammunition By a Person Prohibited, Possession of Drug Paraphernalia, and one count of Endangering the Welfare of a Child. On September 13, 2007, the Defendant pleaded guilty to Possession of a Deadly Weapon (Firearm) By a Person Prohibited and was sentenced to the minimum mandatory sentence of three years of incarceration, followed by a year of Level 3 probation. On May 22, 2008, the Defendant filed this Motion for Postconviction Relief asserting the following claims as grounds for relief: (1) illegal search and seizure, (2) ineffective assistance of counsel, (3) counsel’s failure to file a request for a suppression hearing, (4) “coerced confession of plea agreement,” and

(5) "inadmissible evidence."[1] As indicated above, both the State and trial counsel have responded to the Defendant's Motion.

3. Prior to addressing the merits of a postconviction relief claim, the Court must first determine whether the Motion meets the procedural requirements of Rule 61(i).[2] This section of Rule 61 sets forth certain parameters governing the proper filing of a motion for postconviction relief: (1) the motion must be filed within one year of the final judgment of conviction; (2) any ground for relief not raised in a prior postconviction motion will be barred if raised in the instant Motion; (3) any claims which the Defendant failed to assert in the proceedings leading to his conviction are barred, unless he is able to show cause and prejudice; and (4) any ground for relief raised in this Motion must not have been formerly adjudicated in any proceeding leading to the conviction, unless the interest of justice requires reconsideration.[3]

4. After reviewing the Defendant's present Motion, the Court finds that although the Defendant's Motion is not time-barred, the Defendant's fourth claim ("coerced confession of plea agreement") is procedurally barred under Rule 61(i)(3). This section of Rule 61 bars claims for relief that were not asserted in the proceedings

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[1] Def.'s Mot. at 4.

[2] *See Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

[3] *State v. Greer*, 2008 WL 1850625 (Del. Super. Mar. 4, 2008); *see also* Super. Ct. Crim. R. 61(i)(1)-(5).

below, unless the defendant can show cause and prejudice. This procedural default applies to cases where the defendant did not file an appeal to the Delaware Supreme Court, but does file a motion for postconviction relief, as is the case here.[4] The Defendant executed the Court's truth-in-sentencing guilty plea form indicating he was not forced or threatened into entering his plea and the Court reviewed these questions with him during the plea colloquy. While the Defendant may not have liked the advice and assessment of his case by counsel, it does not equate into the plea being forced upon the Defendant. The State had a very strong case as the weapons were seized from the Defendant's residence during the execution of a valid search warrant. The Defendant was facing multiple counts carrying mandatory sentences, and the plea agreement reflected a fair resolution of a difficult case for the Defendant. The Defendant failed to raise any concern regarding entering his plea during the plea colloquy and as such, this claim is denied.

5. The Defendant next asserts that the police illegally searched his house and wrongfully seized weapons from it. The Fourth Amendment of the United States Constitution and Article I, section 6 of the Delaware Constitution afford individuals protection from illegal searches and seizures, providing:

> [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and

[4] *Truitt v. State*, 1996 WL 376943, at *2 (Del. Jul. 2, 1996).

> no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the places to be searched, and the persons or things to be seized.[5]

The Defendant explains that he raises this claim because the search warrant stated that the item the police sought in the search was cocaine, but that no drugs were found in the house.[6]

6. Under 11 *Del. C.* § 2307(a), a magistrate or judge must find that sufficient facts appear in the search warrant to amount to probable cause, and that the warrant describes with particularity the location to be searched and the items sought.[7] However, the plain view doctrine can expand those items that can legally be seized by the police.[8] Under the plain view doctrine, police officers may seize contraband that is in plain view if: (1) the officer is "lawfully in a position to observe the items" and (2) "the items' evidentiary value is immediately apparent."[9] Therefore, because the police had a properly executed search warrant to enter the Defendant's house, the seizure of the weapons was legal, even though the search warrant's stated purpose was to search for drugs. The police officers were lawfully in the Defendant's home and

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[5] U.S. CONST. amend. IV; DEL. CONST. art. I, § 6.

[6] Def.'s Mot. at 3-4.

[7] 11 *Del. C.* § 2307(a) (2008).

[8] *Hardin v. State*, 844 A.2d 982, 985 (Del. 2004).

[9] *Quirico v. State*, 2004 WL 220328, at *5 (Del. Super. Jan. 2, 2004) (citing *Williamson v. State*, 707 A.2d 350, 358 (Del. 1998)).

the weapons seized were in plain sight and were clearly items the Defendant was prohibited from possessing.[10]

7. The Defendant next argues that he never received a written inventory or receipt of the evidence seized from his house and that this failure should result in the suppression of the evidence seized.[11] Under 11 *Del. C.* § 2307(b), the police officer conducting the search must provide the owner or occupant of the place searched with a copy of the warrant and a receipt of the property seized.[12] However, the Delaware Supreme Court has ruled that a failure to provide the owner with an inventory of the property seized will not invalidate an otherwise valid search.[13] Thus, although there is no Delaware case dealing with a complete failure to provide a defendant with an receipt, the Court finds such a failure does not affect the validity of the search, since the weapons were lawfully seized from the Defendant's home under the plain view doctrine. While the record is void of any testimony as to whether the Defendant

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[10]*See* State's Reply at 2 (stating that Detective Rentz found the following weapons and ammunition in the Defendant's house: (1) a sawed-off Mossberg 20-gauge shotgun with a reduced stock and barrel; (2) a total of eighty-nine Remington .380 rounds; (3) one Sig-Sauer magazine containing seven .380 rounds; and (5) forty-nine Remington .22 rounds).

[11]*Id.*

[12]11 *Del. C.* § 2307(b) (2008).

[13]*See Edwards v. State*, 320 A.2d 701 (Del. 1974) (noting that "a ministerial act subsequent to execution of a validly issued search warrant (such as failing to properly list an item on the return) will not nullify the prior and legal act of searching and seizing."); *see also Derrickson v. State*, 321 A.2d 497 (Del. 1974) (recognizing that a failure to list items on the inventory at all did not affect the validity of the search).

received an inventory of the property seized, even assuming the facts in the light most favorable to the Defendant does not provide him the relief he is seeking.

8. The Defendant also makes two claims of ineffective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, a defendant must meet the two-part test set forth in *Strickland v. Washington.*[14] First, the Defendant must establish that "counsel's representation fell below an objective standard of reasonableness."[15] Second, the Defendant must show that counsel's performance was prejudicial to his defense.[16] This requires a showing that a reasonable probability exists that the outcome of the proceeding would have been different but for counsel's error.[17] 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."[18] As to the second prong, a reasonable probability means "a probability sufficient to undermine confidence in the outcome" of the proceeding.[19]

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[14]466 U.S. 668 (1984).

[15]*Id.* at 688; *see also Cook v. State*, 2000 WL 1177695, at *3 (Del. Aug. 14, 2000).

[16]*Id.* at 687.

[17]*Id.* at 694; *see also Wright v. State*, 608 A.2d 731, 731 (Del. 1992) (citing *Albury v. State*, 551 A.2d 53, 58 (Del. 1988)).

[18]*Albury v. State*, 551 A.2d 53, 59 (Del. 1998) (citing *Strickland*, 466 U.S. at 689).

[19]*Strickland*, 466 U.S. at 694.

9. The Defendant first claims that his second lawyer, Mr. Koyste (his first lawyer, Mr. Haley, withdrew due to a conflict of interest) did not have sufficient knowledge of the case when he took over from Mr. Haley.[20] Mr. Koyste became the Defendant's new lawyer on July 1, 2006, which was about one week before the scheduled suppression hearing (the motion was later withdrawn) and a month and a half before the scheduled trial.[21] The Defendant claims that Mr. Koyste relieved Mr. Haley late in the criminal process and that this made him unfamiliar with the case.[22]

10. The Court finds that this claim of ineffective assistance of counsel fails the two-prong test outlined in *Strickland*. Mr. Koyste explains in his affidavit that he worked closely with Mr. Haley in reviewing the case and that together, they agreed after reviewing the evidence that there was no good faith basis to pursue the motion to suppress.[23] To prepare for the case, Mr. Koyste hired a private investigator to interview potential witnesses and it appears he carefully reviewed all of the evidence provided during discovery or gathered by the investigator. This reflects an attorney who was fully aware of the facts of the case, the difficult challenges facing the Defendant due to the overwhelming evidence against him and one who was prepared

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[20]Def.'s Mot. at 3-4; *see also* Koyste Aff. at 1.

[21]Koyste Aff. at 1.

[22]Def.'s Mot. at 3.

[23]Koyste Aff. at 1.

to provide sound and professional advice to his client. There is nothing in the record to support the Defendant's contention that Mr. Koyste was either unprepared or unfamiliar with the Defendant's case.

11. The Defendant also argues that Mr. Koyste provided ineffective assistance by in essence forcing him to enter a guilty plea.[24] To support this contention, he states: "I was put in a position to sign a plea agreement and not go to trial. I was told I couldn't face the witness by my new attorney [Mr. Koyste] because he was a confidential informant who the State needed to solve more cases."[25] However, as Mr. Koyste explains in his affidavit, the statements alleged by the Defendant are misplaced and out of context because they relate to the suppression hearing that had initially been scheduled and the disclosure of the confidential informant that participated in the drug transaction.[26] However, more important to the ultimate resolution of the Defendant's case was that the informant had no involvement in the seizure of the weapons which were the most serious charges against the Defendant and, if convicted, would have required the imposition of a significant period of incarceration. It is these offenses that forced the Defendant's hand to

[24]Def.'s Mot. at 3-4.

[25]Def.'s Mot. at 4.

[26]Koyste Aff. at 2.

resolve the case. As such, Mr. Koyste's advice to the Defendant was reasonable, resulted in a favorable resolution of the matter and does not reflect ineffective conduct.

12. This claim also fails the second prong of *Strickland*. Mr. Koyste's decision to advise the Defendant to enter into a plea agreement was a strategic decision that was reasonable under the circumstances. The Defendant has not shown that "but for his counsel's unprofessional errors, he would not have pleaded guilty, but would have insisted on proceeding to trial."[27] Given the serious charges facing the Defendant that carried mandatory periods of incarceration, Mr. Koyste's performance and advice was appropriate and the Defendant's decision was reasonable under the circumstances.

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

IT IS SO ORDERED.

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Judge William C. Carpenter, Jr.

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[27] *Grosvenor v. State*, 2006 WL 1765846, at *1 (Del. June 26, 2006) (citing *MacDonald v. State*, 778 A.2d 1064, 1074 (Del. 2001)).