

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

March 17, 2009

Joseph Rogers
12511 N. Old State Road
Ellendale, DE 19941

RE: ***State of Delaware v. Joseph Rogers***
Def. ID# 0706028383
Letter Opinion

Date Submitted: January 28, 2009

Dear Mr. Rogers:

This is my decision on your motion for postconviction relief. You were charged with two counts of Rape in the Second Degree and one count each of Distribution of a Non-Narcotic to a Minor, Unlawful Sexual Contact in the First Degree, and Endangering the Welfare of a Child. The victim was your 14-year-old stepdaughter. You pled no contest to Rape in the Fourth Degree and Distribution of a Non-Narcotic to a Minor. I sentenced you to 10 years at supervision level V, suspended for one year at supervision level IV, followed by probation. You allege that the victim has acknowledged making false statements to the police, and your attorney coerced you into taking a plea. This is your first motion for postconviction relief and it was filed in a timely manner.

I. Recantation

You allege that the victim recanted her allegations in a letter to the Department of Justice. Recantations are to be evaluated under the test set forth in *Larrison v. United States*,¹ which was

¹ 24 F.2d 82 (7th cir. 1928).

adopted by the Delaware Supreme Court in *Blankenship v. State*.² Under this test, the court should grant a new trial when (a) the court is reasonably well satisfied that the testimony given by a material witness is false, (b) that without it the jury might have reached a different conclusion, and (3) that the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after trial.³ Delaware Courts view motions based upon recanted testimony with considerable suspicion.⁴ This is because, as the Arizona Supreme Court has stated, “there is no proof so unreliable as recant[ed] testimony.”⁵ Delaware case law is rife with instances of recantations procured through bribery,⁶ threats,⁷ and, more subtly, coercion from family and neighbors who believe that felony sentences are too harsh.

You were not found guilty by a jury. Instead, you pled no contest in open court.⁸ While the victim’s allegations are important, your plea deprived the State of the opportunity to prove your guilt beyond a reasonable doubt. Moreover, you did not attach a copy of this alleged letter with your motion. Without the letter, your allegation is merely conclusory and, as such, without merit.

² 447 A.2d 428, 433 (Del. 1982).

³*Id.* at 433.

⁴*Id.*

⁵ *State v. Sims*, 409 P.2d 17, 22 (Ariz. 1965).

⁶ *See e.g. State v. Vincent*, 1995 WL 109098 (Del. Super. Feb. 28, 1995).

⁷ *Blankenship*, 447 A.2d 435.

⁸ The test outlined in *Blankenship* does not apply because there was no trial. Thus, there is no way for the Court to measure the credibility of the recantation against the victim’s allegations, nor to weigh whether the recantation would have made a difference at trial.

II. Coerced Plea

You allege that your attorney, Thomas A. Pedersen, Esquire, coerced you into accepting the State of Delaware's plea offer. In support of this argument, you allege that Pedersen told you that you were "pissing me off, and this is the best [offer] you are going to get." Before accepting a plea of no contest, the Court must ensure that the plea is voluntary. In order to do so, the Court must personally address the defendant in open court, determine from the defendant if the plea is voluntary and not the result of force or promises.⁹ The Court is also required to make a record of the proceedings, which includes the Court's advice to the defendant, the inquiry into the voluntariness of the plea, and an inquiry into the accuracy of the plea.¹⁰ Part of the record will also be comprised of the forms completed by the defendant in giving his plea.¹¹ The record before the Court indicates that you entered into your plea agreement voluntarily, knowingly, and intelligently. The following questions are on the Truth-in-Sentencing Guilty Plea Form, which you signed:

Has your attorney, the State, or anyone threatened or forced you to enter this plea?

Are you satisfied with your lawyer's representation of you and that your lawyer has fully advised you of your rights and of your guilty plea?

You answered "No" to the first question and "Yes" to the second. The following is an excerpt of the colloquy that I had with you:

The Court: Do you understand the maximum periods of incarceration that you face?
The Defendant: Yes, Your Honor.

⁹ Del. Super. Ct. R. 11(d).

¹⁰ Del. Super. Ct. R. 11(g).

¹¹ *Id.*

The Court: Do you understand you will have to register as a sex offender?
The Defendant: Yes, Your Honor.
The Court: Do you understand the rights you are waving by pleading guilty?
The Defendant: Yes, Your Honor.
The Court: Did anybody force you to take this plea?
The Defendant: No, Your Honor.
The Court: Did anybody promise you anything in exchange for it?
The Defendant: No, Your Honor.¹²

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The Court: All right. Are you satisfied with Mr. Pedersen's representation of you?
The Defendant: Yes.
The Court: Are you sure that this is how you wish to resolve the charges against you?
The Defendant: Yes.
The Court: All right. Based on that, I will accept your pleas as having been made knowingly, intelligently, and voluntarily. Is there anything else you want to say, Mr. Rogers?
The Defendant: No. It's not the type of person I am. I'm just very sorry it happened.¹³

You are bound by the answers that you gave on the Truth-in-Sentencing Plea Guilty Form and during the plea colloquy.¹⁴ Based on the answers that you gave, there is absolutely no evidence at all that Pedersen coerced you into taking the plea.

CONCLUSION

Your motion for postconviction relief is DENIED.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

Original to Prothonotary
cc: Adam D. Gelof, Esquire
Thomas A. Pedersen, Esquire

¹² Transcript at 4.

¹³ Tr. at 6-7.

¹⁴ *State v. Adkins*, 2005 WL 1384307 (Del. Super. May 18, 2005).