

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

ANGEL FLORES

Defendant

)

)

)

)

)

)

)

CRIMINAL ACTION NUMBER

IN-06-07-1751-R1 IN-06-07-1752-R1

IN-06-07-1754-R1 IN-06-07-1755-R1

ID NOS. 0607012755 & 0608007480

Submitted: January 23, 2009

Decided: March 26, 2009

MEMORANDUM OPINION

Upon Motion of Defendant for Postconviction Relief - DENIED

HERLIHY, Judge

Angel Flores has moved for postconviction relief. His claims are that he received ineffective assistance of counsel, that there was an “unfulfilled” plea agreement, and that there was an undue delay in prosecuting him thereby violating his right to due process.

On April 23, 2007, Flores pled guilty to riot, conspiracy second degree, assault second degree, and possession of a firearm during the commission of a felony. He was sentenced on these charges on January 31, 2008. These pleas arose out of two separate and unrelated incidents that had resulted in two separate indictments.

The assault second degree and PFDCF offenses occurred on June 19, 2006, but he was not arrested for them until April 23, 2007, the date he pled guilty, when an outstanding Rule 9 warrant was executed. He had been indicted for those offenses on November 27, 2006.

The riot and conspiracy second degree offenses occurred on July 16, 2006. He was arrested the following day on July 17, 2006 and committed in lieu of \$163,000.00 bail. He was indicted on February 5, 2007. Flores was in jail in default of bail on the latter two charges of riot and conspiracy second when he was arrested on the assault and PFDCF charges.

The riot and conspiracy charges involved a gang related incident. There were eleven co-defendants. Two of them were indicted for murder, however, Flores was not.

Flores contends that he received ineffective assistance of counsel because his lawyer failed to acknowledge the undue delay from the day of arrest, when he was held in default

of bail, and his indictment seven months later. This delay, he asserts, should have prompted his lawyer to move to dismiss for failure to indict. He claims he would have been entitled to unsecured bail rather than the \$163,000.00 secured bail under which he was committed. In turn, he argues being held prevented him from hiring private counsel and preparing a defense.

Flores also contends the State agreed to a sentence recommendation of no more than five years. Finally, Flores' third ground for relief repackages his first argument of undue delay, except he now argues the delay violated his due process rights.

Discussion

Before undertaking consideration of Flores' claims, the Court must determine if there are any procedural impediments to doing so.¹ Flores filed his motion eight days before one year expired from the date of his sentence. Thus, it was timely filed.

Prior to filing this motion, Flores had filed two requests for modification of sentence. This Court denied both. In his second request seeking a sentence reduction, he says, referring to his children, "I know I wasn't thinking about them when I committed [sic] the mistake that took me away from them."² Repeatedly in that second motion he mentions how his prior acts took him away from his family and career.

¹ *Maxion v. State*, 686 A.2d 148, 150 (Del.1996).

² Flores letter, docketed 6/18/08.

Flores is correct that his counsel did not file a motion to dismiss for failure to indict between July 17, 2006, and the indictment's return on February 5, 2007, for the riot, conspiracy, and some other charges. He is also correct that his counsel did not file a motion to dismiss for failure to indict on the assault and related charges between his arrest on those charges on April 23, 2007, and his indictment on November 27, 2006.

The difficulty with this first claim for relief is that Flores' guilty plea waived any pre-plea defects, such as the right to a speedy trial and/or indictment.³ On the TIS Guilty Plea form which Flores signed on April 23, 2007, one of the rights he waived was for a speedy trial. He is bound by that answer.⁴ Flores says if he had been released awaiting trial it would have enabled him to prepare a defense. He does not explain how or what his defense would have been; and that facial comment is insufficient.⁵ It also contradicts his admissions in his June 2008 letter seeking reduction of his sentence. Under these circumstances, there is no basis for a valid claim of ineffective assistance of counsel.

The same analysis leads to a similar result with his due process claim. It, too, is founded on the delay between his arrests and subsequent indictments. His guilty pleas waive his right to challenge any claim of a lack of speedy indictment.

³ *Benge v. State*, 945 A.2d 1099, 1101 (Del. 2008); *Smith v. State*, 841 A.2d 308, (Del. 2004) (TABLE) (holding a guilty plea waives ability to challenge even errors of constitutional dimension citing *Tolbert v. Henderson*, 411 U.S. 258 (1973)).

⁴ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁵ *Russell v. State*, 734 A.2d 160, 1999 WL 507303, at *2 (Del. Jun. 2, 1999) (TABLE).

The Court is unable to understand Flores' claim that there was an unfulfilled plea agreement. He seems to argue that he could or would not have been sentenced to more than five years in jail. He implies that this what the State promised and says he would not have pled unless that five year "cap" was part of the plea agreement. He refers to the plea agreement in this claim but that agreement has no State sentencing recommendation in it.

In addition, the TIS Guilty Plea Form notes the maximum sentence he could have received was 38 years. Three years had to be imposed due to the PFDCF charge. Ultimately, he received a ten year sentence. The form also indicates he had (1) not been promised anything which is not in the written plea agreement and (2) no one had promised him what his sentence would be. He is bound by those answers absent clear and convincing evidence to the contrary.⁶ He has not supplied that evidence.

Conclusion

For the reasons stated herein, Angel Flores' motion for postconviction relief is **DENIED.**

IT IS SO ORDERED.

J.

⁶ *Harley v. State*, 870 A.2d 1192, 2005 WL 583747, at *1 (Del. Mar. 11, 2005) (TABLE).