

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

STATE OF DELAWARE,)	
)	
)	
v.)	ID#: 0608025757
)	
LEROY COOK,)	
Defendant.)	

ORDER

**Upon Defendant's Motion for Postconviction Relief under
Superior Court Criminal Rule 61 – DENIED**

1. On January 8, 2008, instead of going to trial that day, Defendant pleaded guilty to one count of Rape second degree. During the extensive plea colloquy, discussed below, Defendant repeatedly admitted that he was, in fact, guilty of having sexual intercourse with a child. Moreover, the child's accusation was corroborated by DNA testing of the baby she conceived by him. In short, had Defendant gone to trial, it would have been a walkover and Defendant would be in a far worse predicament.

2. Defendant was sentenced on March 14, 2008. He did not file a direct appeal concerning his guilty plea and sentencing, nor anything leading up to them. Instead, on October 29, 2008, Defendant filed this, his first motion for postconviction relief.

3. Pursuant to Superior Court Criminal Rule 61(d)(1), the motion was properly referred for preliminary review. Although the motion appeared subject to summary dismissal, the court called for responses from the Attorney General and trial counsel, which they filed. On March 30, 2009, Defendant submitted an elaborate reply with many attachments.

4. While the procedural history leading-up to Defendant's admissions of guilt and guilty plea is complex, and despite the weight of Defendant's pleadings, deciding Defendant's motion is neither complicated nor difficult.

5. After he was indicted, Defendant was represented by an Assistant Public Defender, Edmund Hillis, Esquire. To make a long story short, Defendant's relationship with Mr. Hillis became so hostile and dysfunctional that the court had no choice but to relieve Mr. Hillis. The court replaced Mr. Hillis with conflict counsel, Peter M. Letang, Esquire, in early November 2007. Not that it matters here, Defendant and his former counsel share blame for their attorney/client relationship's destruction.

6. Anyway, Mr. Letang's advent was refreshing. That was no surprise, considering Mr. Letang's experience. Mr. Letang has been a member of the Delaware Bar for almost 35 years. The court takes notice that Mr. Letang has specialized in criminal law. He has prosecuted and defended all sorts of criminal cases, including notorious capital murders. In short, Mr. Letang is one of the most experienced and best criminal law specialists in Delaware. And, it appears that Mr. Letang brought his skills to bear here.

7. During the four months that Mr. Letang represented Defendant, it appears they maintained a positive, professional relationship. In any event, once Mr. Letang appeared, Defendant's complaints stopped. According to Mr. Letang, Defendant and he did not always see eye-to-eye. For example, Mr. Letang (correctly) refused to file various motions at Defendant's behest. Nevertheless, when Defendant pleaded guilty, he assured the court orally and in writing that he was satisfied with Mr. Letang.

8. As mentioned, the day-of-trial plea colloquy was extensive. That was despite the fact that Defendant had pleaded guilty more than once before and, therefore, was familiar with the process. Here, the colloquy included the following exchange:

The court: This is important, Mr. Cook. Everything that's happening, I suppose, is important, but I think this may be especially important. From the moment the plea is accepted today, it will be almost impossible for you to back out of it. Today is the day for you to have your trial, if you want one. You cannot come back after today after we've had the State dismiss its witnesses and we have sent the jury panel home and so forth. We're not going to come back on another day to give you your trial. So today is it in terms of whether you want a trial. If you enter the plea today, it's permanent. Do you understand all that?

Mr. Cook: Understood.

9. Defendant's motion presents six grounds accompanied by a memorandum raising nine issues. The motion and memorandum overlap. The first three issues involve assorted, alleged abuses of discretion concerning judicial actions taken before Mr. Letang's appointment and the guilty plea. In large part, they concern the court's efforts to deal with Defendant's and Mr. Hillis's troubled relationship.

10. The fourth issue is ineffective assistance of counsel provided by Mr. Hillis. The fifth and sixth issues are alleged ineffective assistance of counsel by Mr. Letang. For the most part, the ineffective assistance of counsel claims against

Mr. Letang concern failure to interview witnesses and to file motions to Defendant's liking.

11. The seventh issue alleges error by the court because it accepted Defendant's plea on January 8, 2008 and scheduled him for sentencing on March 14, 2008, which somehow "shows that [the court] was aware that I was being tak[en] advantage of and [the judge] did nothing to stop or correct the miscarriage of justice." Issue eight alleges "prosecutor misconduct," stemming from amendments to the indictment. Finally, issue nine alleges that Defendant "was indicted on November 27, 2006, more than five years after the offenses were allegedly committed."

12. Because the issues raised by Defendant concern things that happened before he pleaded guilty and because his guilty plea was knowing, voluntary and intelligent, Defendant waived those claims when he pleaded guilty.¹ Moreover, because Defendant did not bring his claims to the court's attention and because he did not file a direct appeal concerning anything leading up to his guilty plea and sentencing, Defendant's claims are also procedurally barred under Superior Court Criminal Rule 61,² and he has not shown cause or prejudice.

¹ *Johnson v. State*, 962 A.2d 917 (Del. 2008) (TABLE).

² *See* Super. Ct. Crim. R. 61(i)(3).

13. The only claim that even superficially might clear the procedural bar concerns the statute of limitations. According to the indictment and Defendant's in-court admission, the crime occurred "between September 9, 1998, and June 30, 2003." Accordingly, if the five-year, general statute of limitations applied,³ the rape might have occurred before the five year window. That might give currency to Defendant's claims of ineffective assistance of counsel and he might be excused for not raising such a sophisticated, legal claim earlier. The simple answer, however, is that there is no statute of limitations for a rape that occurred after 1992.⁴ It is undisputed that the victim gave birth to Defendant's baby on September 2, 2001. Thus, one rape had to have occurred no later than December 2000. So, the indictment was timely even if the five year limitation applies, which it does not.

14. All-in-all, Defendant's motion for postconviction relief amounts to nothing more than "buyer's remorse." Taking the State's case into account, however, Defendant almost certainly did better by pleading guilty on January 8, 2008, rather than facing trial that day. By pleading guilty to what he truly did, Defendant avoided multiple convictions and punishment that would be tantamount to a life sentence.

³ 11 *Del. C.* § 205(b).

⁴ 11 *Del. C.* § 205(e) ("Notwithstanding the period prescribed by subsection (b) . . . a prosecution for . . . [Rape, second degree] . . . may be commenced at any time.").

For the foregoing reasons, Defendant's Motion for Postconviction Relief is **DENIED**.

IT IS SO ORDERED.

Date: May 20, 2009

/s/ Fred S. Silverman
Judge

cc: Prothonotary (Criminal Division)
Renee L. Hrivnak, Deputy Attorney General
Peter Letang, Esquire
Leroy Cook, Sr., Defendant