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

STATE OF DELAWARE	)	
	)	
v.	)	I.D. No. 0505004361
	)	
CHAKKIRA WONNUM,	)	
	)	
Defendant.	)	

UPON CONSIDERATION OF DEFENDANT'S
FIRST *PRO SE* MOTION FOR POSTCONVICTION RELIEF
AND APPOINTMENT OF COUNSEL
DENIED

Submitted: June 26, 2009
Decided: June 30, 2000

This 30th day of June, 2009, it appears to the Court that:

1. On July 22, 2008, Defendant Chakkira Wonnum ("Wonnum") pleaded guilty to one count of Murder Second Degree, one count of Possession of a Firearm During the Commission of a Felony, and one count of Assault First Degree. Wonnum filed this, her first *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61, on March 6, 2009. Wonnum seeks to have the Court vacate her guilty plea and appoint counsel.

2. Wonnum's plea followed a 2007 ruling by the Delaware Supreme Court that overturned her conviction by a jury of Murder First

Degree, Possession of a Firearm During the Commission of a Felony, Assault First Degree, Robbery First Degree, Conspiracy Second Degree, and Possession of a Deadly Weapon by a Person Prohibited.[1] The Supreme Court held that this Court erred by excluding expert testimony regarding Wonnum's psychological disposition and by rejecting a proposed jury instruction on duress.[2]

3. Before Wonnum's second trial, she entered into a plea agreement with the State.[3] Pursuant to this agreement, Wonnum pleaded guilty to the three charges listed above in exchange for the State entering a *nolle prosequi* on all remaining charges and recommending a sentence of twenty-five years at Level V confinement. This Court ultimately entered a sentence lower than the State's recommendation, sentencing Wonnum to seventeen years at Level V for the Murder Second Degree charge, plus five years at Level V for the remaining offenses.

4. Wonnum's motion alleges "state and judicial interference" in the plea negotiation process, as well as ineffective assistance of counsel.[4] In

[1] *Wonnum v. State*, 942 A.2d 569 (Del. 2007).

[2] *Id.*

[3] Docket 76 (Plea Agreement).

[4] Docket 83 (Def.'s Mot. for Postconviction Relief), at 3.

a lengthy supporting memorandum, Wonnum claims that defense counsel informed her that the trial court and prosecution would not permit her to present a duress defense at her second trial, contrary to the Supreme Court's ruling. Therefore, Wonnum asserts, her counsel required her to accept the plea agreement, and she "believed she had no other alternative."[5] Wonnum argues that her counsel were ineffective for failing to "advocate in her best interest" on numerous bases, including: (1) permitting the Court to interfere with the plea negotiations; (2) neglecting to inform her of the elements of the crimes to which she pled and the possible range of sentences; and (3) refusing to "pursue a more appropriate and acceptable plea arrangement."[6]

5. Wonnum's defense counsel responded by affidavit to her ineffective assistance allegations. Defense counsel deny Wonnum's claims that she was forced to accept the plea agreement. Counsel note that the State did not present any plea offer until after Wonnum's initial convictions were reversed and defense counsel submitted a lengthy letter to the State detailing the law and facts underpinning their planned duress defense for her second trial. After plea negotiations were initiated, trial counsel assert that they explained to Wonnum both the consequences of pleading and the risks of a

[5] Docket 85 (Def.'s Mem. in Support of Mot. for Postconviction Relief).

[6] *Id.*

new trial. In particular, counsel informed Wonnum of the charges against her, the range of possible sentences, and the fact that the jury could either accept or reject her duress defense if she proceeded to trial. Counsel offered Wonnum their opinion that accepting the State's plea offer was in her best interests, but made clear that the decision was ultimately hers. At no time, according to counsel, did the Court participate in plea negotiations.

6. Before addressing the substantive merits of any claim for postconviction relief, the Court must determine whether the defendant has satisfied the procedural requirements of Superior Court Criminal Rule 61 ("Rule 61").[7] To protect the procedural integrity of Delaware's rules, the Court will not consider the merits of a postconviction claim that fails any of Rule 61's procedural requirements.[8]

7. Rule 61(i) establishes four procedural bars to motions for postconviction relief: (1) the motion must be filed within three years of a final judgment of conviction;[9] (2) any grounds for relief which were not

[7] *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). *See also Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *State v. Mayfield*, 2003 WL 21267422, at *2 (Del. Super. June 2, 2003).

[8] *State v. Gattis*, 1995 WL 790951, at *3 (Del. Super. Dec. 28, 1995) (citing *Younger*, 580 A.2d at 554).

[9] The motion must be filed within three years if the final order of conviction occurred before July 1, 2005, and within one year if the final order of conviction occurred on or after July 1, 2005. *See* Rule 61, annot. *Effect of amendments*.

asserted previously in any prior postconviction proceeding are barred; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules; and (4) any basis for relief must not have been formerly adjudicated in any proceeding. However, a defect under Rule 61(i)(1), (2), or (3) will not bar a movant's "claim that the court lacked jurisdiction or . . . a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity, or fairness of the proceedings leading to the judgment of conviction."[10] Because a claim of ineffective assistance of counsel alleges a constitutional violation meeting this standard, colorable ineffective assistance claims are not subject to the procedural bars contained in Rule 61(i)(1), (2), or (3).[11]

8. Wonnum's claims are not barred under Rule 61(i). Her claim of judicial and prosecutorial interference in the plea negotiation process is timely-filed, has not been previously asserted or adjudicated, and could not have been raised previous to this motion. Her claims of ineffective assistance of counsel are not subject to the bars of Rule 61(i)(1), (2), or (3),

[10] Super. Ct. Crim. R. 61(i)(5).

[11] *See State v. MacDonald*, 2007 WL 1378332, at *4, n. 17 (Del. Super. May 9, 2007).

and have not been previously adjudicated. Accordingly, the Court will address the merits of Wonnum's motion.

9. A defendant seeking to withdraw her guilty plea after the imposition of sentence bears the burden of proving that the plea was "[n]ot voluntarily entered or was entered because of misapprehension or mistake as to . . . [the defendant's] legal rights."[12] In *State v. Friend*,[13] the Court enunciated five factors for the Court to consider in determining whether to permit withdrawal of a guilty plea:

> (a) Whether there was a procedural defect in taking the plea;
> (b) Whether the defendant knowingly and voluntarily consented to the plea agreement;
> (c) Whether the defendant presently has a basis to assert legal innocence;
> (d) Whether the defendant received adequate legal counsel throughout the proceedings; and
> (f) Whether granting the motion would prejudice the State or unduly inconvenience the Court.[14]

The decision to permit a defendant to withdraw her guilty plea rests in the sound discretion of the Court.[15]

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[12] *State v. Phillips*, 2007 WL 3105749, at *1 (Del. Super. Sept. 20, 2007) (quoting *State v. Drake*, 1995 WL 654131, at *2 (Del. Super. Nov. 1, 1995)).

[13] *State v. Friend*, 1994 WL 234120, at *1-2 (Del. Super. May 12, 1994), *aff'd*, 683 A.2d 59, 1996 WL 526005 (Del. Aug. 16, 1996) (TABLE).

[14] *Phillips*, 2007 WL 3105749, at *1 (citing *Friend*, 1994 WL 234120, at *1-2).

[15] *Id.* at *1 (citing *Brown v. State*, 250 A.2d 503, 504 (Del. 1969)).

10. To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy the two-part test of *Strickland v. Washington* by showing both: (1) that counsel's representation fell below an objective standard of reasonableness, and (2) that the errors by counsel amounted to prejudice.[16] The defendant faces a "strong presumption that the representation was professionally reasonable" in attempting to meet the first prong.[17] Where ineffective assistance is alleged following a guilty plea, a defendant attempting to satisfy the second prong must show that but for counsel's ineffectiveness, she would have insisted on going to trial rather than pleading guilty.[18] If either prong is not met, the defendant's claim fails.

11. The record belies Wonnum's claims. First, there is no support for her allegations of judicial interference in the plea negotiation process. The Court does not involve itself in plea negotiations, in this or any other case. Had Wonnum proceeded to trial, she would have been permitted to present a defense based on duress, pursuant to the Supreme Court's ruling.

12. Wonnum's ineffective assistance claims are similarly undermined by the record, and do not satisfy *Strickland*. The Court credits

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[16] *Albury v. State*, 551 A.2d 53, 58 (Del. 1988) (citing *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984)).

[17] *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996) (citation omitted).

[18] *See Albury*, 551 A.2d at 58-59.

defense counsel's statements that they conveyed complete and accurate information to Wonnum regarding the charges against her, the range of potential sentences, her opportunity to present a duress defense at trial, and the risks and consequences of accepting the State's plea offer versus proceeding to trial. Wonnum presents no evidence supporting that her plea was involuntary or the result of ineffective assistance. To the contrary, Wonnum signed a Truth-in-Sentencing guilty-plea form prior to entering her plea in which she stated that she had been notified of the minimum mandatory sentence, was satisfied with her lawyers' representation, had been fully advised of her rights, and "freely and voluntarily decided to plead guilty."[19] The form also listed the statutory sentencing ranges and guidelines for all three charges to which Wonnum pleaded guilty.[20]

13. Furthermore, the Court engaged Wonnum in an extensive plea colloquy to ascertain that her plea was entered knowingly and voluntarily. During the colloquy, Wonnum confirmed that her plea was not coerced:

> The Court: Were there any questions on this Truth-in-Sentencing guilty-plea form that you did not understand or that either of your attorneys were not able to explain to you?
> The Defendant: No.
> The Court: Are you freely and voluntarily pleading guilty to the charges that are listed in the written plea agreement?

[19] Docket 76 (Truth-In-Sentencing Guilty Plea Form).

[20] *Id.*

> The Defendant: Yes.
> * * *
> The Court: Has your attorney, the State, or anyone threatened or forced you to enter into this plea?
> The Defendant: No.
> The Court: Do you understand that because you're pleading guilty, you will not have a trial?
> The Defendant: Yes.[21]

The Court then reviewed the specific rights waived by the plea, and Wonnum asserted that she understood those waivers. The Court also ensured that Wonnum was aware of the range of possible sentences for the offenses to which she would plead.[22] Finally, before accepting Wonnum's plea, the Court confirmed her understanding of the Truth-in-Sentencing form, and her satisfaction with defense counsel's representation:

> The Court: And have you read and understood all the information in this Truth-in-Sentencing guilty-plea form?
> The Defendant: Yes.
> The Court: And are you satisfied with your lawyers' representation of you in that they have fully advised you of all your rights?
> The Defendant: Yes.[23]

Thus, the record before the Court, including Wonnum's own statements, undermines completely Wonnum's claims that she was forced to accept the plea as a result of ineffective counsel.

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[21] Plea Colloquy Tr., at 7-9.

[22] *Id.* at 10-12.

[23] *Id.* at 12.

14. Beyond her own conclusory assertions, Wonnum also fails to demonstrate that she would have insisted on proceeding to trial but for counsel's alleged ineffectiveness. Accepting the plea bargain benefited Wonnum by reducing the number and severity of the charges against her and by avoiding the uncertainties of a jury trial, including the risk that the jury could reject her planned duress defense. Under these circumstances, the Court cannot find that Wonnum has satisfied either prong of the *Strickland* standard.

15. Upon analyzing the relevant factors under *Friend*, the Court concludes that Wonnum has not demonstrated that there was a procedural defect in the plea process, that her plea was unknowing or involuntary, or that her counsel's representation was inadequate. Therefore, Wonnum has not met her burden of showing that her plea was involuntary or was entered as the result of mistake or misapprehension as to her legal rights.

16. Wonnum also seeks to have counsel appointed. There is no constitutional right to counsel in postconviction proceedings.[24] Counsel may be appointed in the Court's discretion upon good cause shown, "but not

[24] *See, e.g.*, *Floyd v. State*, 612 A.2d 158, 1992 WL 183086, at *1 (Del. July 13, 1992) (TABLE).

otherwise."[25] Because Wonnum's contentions are unsupported by the record and her ineffective assistance claims do not meet the *Strickland* standard, the Court finds no cause to appoint counsel.

17. For the foregoing reasons, Wonnum's Motion for Postconviction Relief and Apppointment of Counsel is hereby **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary
cc: Chakkira Wonnum

[25] *See* Super. Ct. Civ. R. 61(e).