

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

STATE OF DELAWARE)	
)	
)	I.D. No. 0807032784
v.)	
)	
TIMEEKA CROPPER)	
)	
Defendant)	

Submitted: July 31, 2009
Decided: September 14, 2009

Upon Defendant's Motion for Postconviction Relief.
DENIED.

ORDER

John W. Downs, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Timeeka Cropper, New Castle, Delaware, *pro se*.

COOCH, J.

This 14th day of September, 2009, upon consideration of Defendant's motion for postconviction relief, it appears to the court that:

1. On September 15, 2008, Defendant was indicted on several charges including Robbery First Degree.¹ The events giving rise to the indictment

¹ Answer to Mot. For Postconviction Relief at 1.

for Robbery First Degree occurred at the Concord Mall on July 14, 2008 when Defendant brandished a “hammer/knife tool” at a store employee who confronted her with shoplifting.² Although Defendant now alleges she never brandished the “hammer/knife tool,” this statement is inconsistent with statements given by the victim and a mall employee.³ Prior to trial on the Robbery First Degree charge, Defendant was offered several opportunities to plead guilty, which she rejected.⁴

2. Beth D. Savitz, Esquire, Assistant Public Defender, was initially appointed to represent Defendant.⁵ However, shortly before trial, Defendant privately retained Michael W. Modica, who substituted his appearance for Ms. Savitz.⁶ “At the initial consultation with the defendant, [Mr. Modica] advised [Defendant] after reviewing the police reports, that the evidence against her was very strong and that there was little [he] could do to defend her. [He] advised her to accept the plea agreement made to her public defender since it was likely that she would be found guilty of all charges if

² *Id.* at 2.

³ *Id.* at 3.

⁴ Defendant was first offered the opportunity to plead guilty to charges of Robbery First Degree, Assault Third Degree, and Shoplifting Over \$1000 on November 10, 2008 (the Robbery First Degree carried a minimum mandatory sentence of three years). *Id.* She was subsequently offered the opportunity plead to charges of Robbery Second Degree, Possession of a Deadly Weapon During Commission of a Felony, and Shoplifting over \$1000 on February 9 (the Possession of a Deadly Weapon During Commission of a Felony carried a minimum mandatory sentence of two years). *Id.* She rejected those plea offers.

⁵ *Id.*

⁶ *Id.*

she proceeded to trial. She insisted that [counsel] represent her.”⁷ Counsel agreed to represent Defendant on the condition that he would recommend she take the best plea offer available, a condition to representation that Defendant voluntarily accepted.⁸

3. Mr. Modica then negotiated for Defendant to plead guilty in exchange for a recommended mandatory minimum period of incarceration of two years.⁹ Counsel informed Defendant that if she refused the offer, the State “would not make the offer again and at trial the offer would be to plea to Robbery First Degree, Assault Third Degree and Shoplifting Over \$1000, with a three year mandatory minimum period of incarceration.”¹⁰ Despite the advice of counsel, Defendant again rejected the State’s offer.¹¹

4. On her trial date, March 17, 2009, the State offered Defendant a plea offer to Robbery First Degree, Assault Third Degree and Shoplifting Over

⁷ Modica Aff. at ¶ 3.

⁸ *Id.* Despite this “agreement,” there is no indication in the record that defense counsel was not ready to proceed to trial in the event that the State’s plea offer was unacceptable, and in any event, having entered his appearance on Defendant’s behalf, he would have been required to represent her at trial if no plea agreement satisfactory to Defendant had been negotiated. *See Red Dog v. State*, 625 A.2d 245, 247 (Del. 1993) (discussing the duty of the attorney to consult with a client and abide by the client’s wishes for representation); *see also Briscoe v. State*, 2006 WL 2190581, at * 3 (Del. Super. July 28, 2006) (stating that Defendant’s right to trial by jury is a fundamental right); DLRPC Rule 1.2 (“In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.”).

⁹ *Id.* at ¶ 4.

¹⁰ Answer to Mot. For Postconviction Relief at 4.

¹¹ Modica Aff. at ¶ 4.

\$1000, the Robbery Charge carrying a three year mandatory minimum period of incarceration.¹² The State was prepared to proceed to trial if Defendant rejected this final offer.¹³ After consulting with counsel, Defendant accepted the offer and completed a Truth in Sentencing form acknowledging that she waived several rights in return for the State's offer.¹⁴ Given Defendant's initial reluctance to accept the State's plea offer, the Court conducted a particularly thorough plea colloquy:

THE COURT: Do you believe you are knowingly, voluntarily, and intelligently entering a plea of guilty to these charges?

THE DEFENDANT: Yes, your Honor.

THE COURT: I find the guilty pleas to be knowingly, voluntarily, and intelligently offered. And I'll make the following additional observation for the record. I've tried to be particularly thorough and observant in this plea colloquy, because it's been explained to me that defendant, as most defendants feel, wishes she was doing something else other than pleading guilty to these particular charges.¹⁵

The Court accepted the pleas after finding "the guilty pleas to be knowingly, voluntarily, and intelligently offered."¹⁶ Defendant was then sentenced immediately on the Robbery First Degree charge to "eight years at Level V, given credit for 138 days . . . suspended after three years for 18 months at Level III probation. Restitution [was] ordered."¹⁷

¹² *Id.* at ¶ 5.

¹³ Answer to Mot. For Postconviction Relief at 4.

¹⁴ Modica Aff. at ¶ 6.

¹⁵ Tr. of March 17, 2009 Sentencing at 17-18.

¹⁶ *Id.*

¹⁷ *Id.* at 20.

5. After sentence was imposed, Defendant filed this motion for postconviction relief on July 31, 2009 alleging that her guilty plea was a result of ineffective assistance of counsel, and was otherwise involuntary and unknowing.¹⁸ Defendant alleges that counsel failed to investigate whether the device she used in the robbery was a “deadly weapon” under 11 *Del. C.* § 222(5) or a deadly instrument under 11 *Del. C.* § 222(4) and further alleges that counsel allowed the State to “overcharge” her by not adequately advising her of her legal rights.¹⁹

6. Defendant’s claim of ineffective assistance of counsel is governed by the United States Supreme Court’s decision in *Strickland v. Washington*.²⁰ Under *Strickland*, Defendant bears the burden of proof in showing that counsel’s efforts “fell below an objective standard of reasonableness” and that, but for counsel’s alleged error there was a reasonable probability that the outcome would have been different.²¹ Allegations that are entirely conclusory are legally insufficient to prove ineffective assistance of counsel; the defendant must allege concrete allegations of actual prejudice and substantiate them.²² Furthermore, when evaluating counsel’s performance,

¹⁸ See Mot. for Postconviction Relief at 6.

¹⁹ *Id.* at 6-8.

²⁰ 466 U.S. 668 (1984).

²¹ *Id.* at 688, 694.

²² *Jordan v. State*, 1994 WL 466142 (Del.) (citing *Younger v. State*, 580 A.2d 552 (Del. 1990)).

“a court must indulge a strong presumption that counsel’s conduct falls within the wide range of professional assistance.”²³

7. Defendant’s contention that her guilty plea was a product of ineffective assistance of counsel is without merit and does not meet the burden of proof established in *Strickland*. Under 11 *Del. C.* § 832, a Robbery First Degree charge is appropriate when the defendant uses or threatens force, while committing a theft, with the intent to overcome resistance to the taking of the property or to retain the property after taking it.²⁴ Additionally, the defendant must display or imply that she possesses a deadly weapon or use or threaten another with a dangerous instrument.²⁵ Despite Defendant’s allegations that she was “overcharged” because counsel failed to conclude that the tool used in the robbery was neither a deadly weapon nor a dangerous instrument, there is no indication that counsel failed to properly investigate the instrument used or to conclude that the weapon fit the definition of either a deadly weapon or a dangerous instrument. First, the description of the weapon provided in defense counsel’s affidavit indicates that counsel examined the weapon long enough to conclude that the weapon fit under either the definition of 11 *Del. C.* § 222(5) or 11 *Del.*

²³ *Strickland*, 446 U.S. at 689.

²⁴ 11 *Del. C.* § 832.

²⁵ *Id.*

C. § 222(4), a prerequisite for a charge of Robbery First Degree.²⁶ Second, after a thorough examination of the weapon, counsel appropriately concluded that the “hammer/knife tool” used in the robbery fits under the definition of deadly weapon under 11 *Del. C.* § 222(5) because it was a “knife of any sort,” or under the definition of dangerous instrument as defined under 11 *Del. C.* § 222(4) because the device could have caused serious physical injury if Defendant had succeeded in striking the victim.²⁷ Thus, there is no indication that defense counsel failed to properly investigate the case or advise Defendant that the State could successfully prosecute her for Robbery First Degree.

8. Additionally, there is no evidence that defense counsel failed to advise Defendant of her legal rights when recommending the plea. After advising Defendant of the overwhelming evidence against her, counsel recommended accepting the State’s final plea offer, which Defendant voluntarily accepted.²⁸ Defense counsel negotiated the best plea offer under the circumstances considering that Defendant had previously rejected other

²⁶ Modica Aff. at ¶ 7.

²⁷ *Id.*

²⁸ *Id.* at ¶ 6.

better offers by the State and trial was scheduled to proceed on the day the plea was finally accepted.²⁹

9. Finally, there is no indication in the record that the plea was not entered knowingly, voluntarily, and intelligently. The Court painstakingly went through the process of making sure Defendant understood the plea she was accepting and the rights she was waiving.³⁰ Defendant specifically stated that she understood the State's recommendation, and she specifically admitted to committing the crime of Robbery First Degree when the events giving rise to the charge were read aloud.³¹ Defendant accepted the plea only after she read and signed the plea agreement and told the Court that her plea was entered knowingly, voluntarily, and intelligently.³² Although Defendant originally had the opportunity to take a more favorable offer, she voluntarily rejected the prior offers until she was left with the decision to accept the State's final offer or proceed to trial.

10. For the reasons stated above, there is no evidence in the record that counsel's conduct fell below any objective standard of reasonableness as required by *Strickland*. Additionally, Defendant knowingly, voluntarily, and

²⁹ The final plea offer involving a minimum mandatory sentence of three years, while involving one more year than the previous offer by the State, was much shorter than the mandatory minimum incarceration Defendant faced if she had been convicted of all charges at trial. *See* Answer to Mot. For Postconviction Relief at 7.

³⁰ Tr. of March 17, 2009 Sentencing at 17

³¹ *Id.* at 16.

³² *Id.* at 15-17.

intelligently accepted the plea offer after counsel advised her of her legal rights. Therefore, Defendant's motion for postconviction relief is **DENIED**.

IT IS SO ORDERED

Richard R. Cooch, J.

oc: Prothonotary
cc: Investigative Services
Michael W. Modica, Esquire
Beth D. Savitz, Esquire, Assistant Public Defender