

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

STATE OF DELAWARE,)	
)	
v.)	I.D. # 0602002069
)	
)	
LATOYA McDUFFIE,)	
)	
Defendant.)	

Date Submitted: June 10, 2009
Date Decided: September 10, 2009

OPINION

Defendant's Pro Se Motion for Postconviction Relief.
DENIED.

Scott, J.

I. Introduction

Presently before the Court is Defendant's Motion for Postconviction Relief filed pursuant to Superior Court Criminal Rule 61.¹ Defendant claims that she is entitled to postconviction relief due to constitutional violations, and because she received ineffective assistance of counsel. Her claims of constitutional violations are procedurally barred, and she fails to establish that her counsel was ineffective. Accordingly, Defendant's motion is **DENIED**.

II. Background

On March 20, 2006, Defendant Latoya McDuffie ("McDuffie") was indicted for Murder in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. On April 2, 2007, she pled guilty to the lesser included offense of Manslaughter, and also to Possession of a Deadly Weapon During the Commission of a Felony. She was sentenced to twenty years at Level V on the Manslaughter charge, to be suspended after fourteen years for decreasing levels of supervision. She was sentenced to an additional mandatory two years at Level V on the Possession of a Deadly Weapon During the Commission of a Felony charge.²

¹ Super. Ct. Crim. R. 61.

² Sentence Order, Docket Item ("D.I.") 7.

McDuffie asserts three claims for postconviction relief: (1) violation of her Constitutional right to a speedy trial; (2) violation of her Due Process rights; and (3) ineffective assistance of counsel.

III. Discussion

Before addressing the merits of the motion, this Court must first determine whether the defendant has met the procedural requirements pursuant to Superior Court Criminal Rule 61.³ Pursuant to Rule 61(i)(1), a motion that is filed more than one year after judgment of conviction is procedurally time barred.⁴ For the purposes of this rule, a conviction is final thirty days after sentencing, unless a direct appeal is filed in that time frame.⁵ McDuffie pled guilty and waived her right to file a direct appeal on April 2, 2007 and she was sentenced on June 18, 2007. Therefore, her conviction became final on July 18, 2007. McDuffie filed this motion on September 30, 2008, which is more than one year after her conviction became final. Thus, her motion for postconviction relief is procedurally time barred unless her claims fall within the fundamental fairness exception of Rule 61(i)(5).⁶

The exception under Rule 61(i)(5) allows a defendant to avoid the first three procedural bars if (1) the court lacked jurisdiction or (2) defendant states a

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁴ Super. Ct. Crim. R. 61(i)(1).

⁵ Super. Ct. Crim. R. 61(m)(1).

⁶ Super. Ct. Crim. R. 61(i)(5).

colorable claim that must be remedied to avoid a miscarriage of justice. This exception, however, is narrowly construed and the defendant has the burden of proof to show that there has been a deprivation of a substantial Constitutional right that “undermined the fundamental...reliability”⁷ of the prior proceedings. Because McDuffie does not claim that this court lacked jurisdiction, she must establish 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.”⁸

McDuffie first claims that she was not afforded her speedy trial rights. This allegation is without merit. The Truth-in-Sentence Guilty Plea Form that McDuffie signed clearly states that by pleading guilty she waived, among other rights, her Constitutional right to a speedy and public trial. Therefore, she has no basis from which to make this claim. Furthermore, Administrative Directive 131 (a)(1) provides that “all cases must be tried and/or otherwise adjudicated within one year from the date of indictment.”⁹ However, a judge may depart from the guidelines in the Directive when the interest of justice requires.¹⁰ The indictment occurred on March 20, 2006 and the plea was entered on April 2, 2007. The record

⁷ Super. Ct. Crim. R. 61(i)(5).

⁸ Super. Ct. Crim. R. 61(i)(5).

⁹ Admin. Dir. 131 (Del. July 11, 2001).

¹⁰ Admin. Dir. 131 (a)(4).

indicates that defense counsel requested and the Court granted a continuance of the trial date. Thus, the thirteen day delay of adjudication is attributable to McDuffie.

McDuffie next claims that she was denied Due Process of the law insofar as she was not afforded full understanding of the results of her guilty plea or sentencing. The transcript of her plea colloquy belies that claim. At the hearing, the Court asked McDuffie a series of questions relating to her plea. In response, she stated that she understood the consequences of her plea, the nature of the charges, and her potential sentence.¹¹ The Record confirms that McDuffie entered into the plea agreement knowingly, intelligently, and voluntarily.¹²

McDuffie's final claim is ineffective assistance of counsel. Under *Strickland v. Washington*,¹³ and *Flamer v. State*,¹⁴ the test for ineffective assistance of counsel is (1) whether counsel's representation fell below an objective standard of reasonableness, and (2) that there is a reasonable probability, that, but for counsel's unprofessional errors, the result of the proceeding would have been different.¹⁵ Additionally, there is a strong presumption that legal representation is professionally reasonable.¹⁶ Furthermore, one must "evaluate the conduct from

¹¹ Hr'g Tr. at 3-6

¹² *Id.*

¹³ 466 U.S. 668 (1984).

¹⁴ 585 A.2d 736 (Del. 1990).

¹⁵ *Strickland*, 466 U.S. at 688, 694.

¹⁶ *Flamer*, 585 A.2d at 753-54.

counsel's perspective at the time" in order to eliminate the "distorting effects of hindsight" to see the true effects of counsel's actions.¹⁷

McDuffie claims that defense counsel was ineffective because she failed to use all available defenses in plea negotiations. This claim is unsubstantiated. Defense counsel states that she engaged in extensive plea negotiations with the State. Originally, the plea offer was to Murder Second Degree. Defense counsel revealed her desire to pursue an emotional distress defense and ultimately secured a plea to the lesser charge of manslaughter. McDuffie clearly benefited from defense counsel's tactical negotiation skills.

McDuffie alleges, also claims, that defense counsel was ineffective because she was not present during the pre-sentence interview. McDuffie does not have a constitutional right to have counsel present during the pre-sentence interview because it is not deemed to be a critical stage of trial.¹⁸ Furthermore, she fails to show that she was prejudiced by defense counsel's absence. McDuffie claims that if defense counsel had been present, she would not have divulged as much information to the investigator. The Court has reviewed the pre-sentence report. In her interview, McDuffie stated that she did not remember cutting the victim, but acknowledges that she killed the victim. Because she had already pled guilty to her crimes, her admission was not prejudicial. The report indicates that she was

¹⁷ *Gattis v. State*, 697 A.2d 1174, 1178 (Del. 1997).

¹⁸ *U.S. v. Tyler*, 281 F.3d 84 (3d. Cir. 2002).

cooperative with the investigator and exhibited remorse for her actions. These are attributes beneficial to McDuffie. Because she fails to show that she had a right to have counsel present during the pre-sentence interview or that she was prejudiced by her absence, this claim fails under both prongs of *Strickland*.

Finally, McDuffie claims that defense counsel was ineffective because she did not explain to her that the Court could impose a sentence outside of the range recommended by the State. Defendant claims that she would not have pled guilty had she known that she could be sentenced to more time than the State's recommendation. The Delaware Supreme Court held in *Dorsey v. State* that, "[t]o prevail on a claim of ineffective assistance of counsel in connection with a guilty plea, a defendant must show that, but for his counsel's unprofessional errors, he would not have pleaded guilty, but would have insisted on proceeding to trial."¹⁹

In her affidavit, defense counsel indicates that she met with McDuffie prior to the entry of the plea.²⁰ Defense counsel states that she discussed the plea agreement with McDuffie and explained to her that the Court was not bound by the recommended sentence. McDuffie executed the Court's Truth-In-Sentencing Guilty Plea Form thereby acknowledging the total consecutive penalty of 50 years incarceration.

¹⁹ 2006 WL 889364 (Del., April 4, 2006).

²⁰ Def. Counsel Aff., D.I. 66.

During the plea colloquy, McDuffie stated that she had thoroughly discussed her plea with defense counsel and that she was satisfied with the advice her counsel gave regarding the plea. In the absence of clear and convincing evidence to the contrary, McDuffie is bound by her answers on the guilty plea form and by her testimony at the plea colloquy.²¹ Moreover, the record reflects that McDuffie received a significant benefit from the plea agreement. Had Defendant proceeded to trial, she risked a sentence of life imprisonment. For these reasons, the Court finds McDuffie's claim to be without merit.

IV. Conclusion

McDuffie fails to establish a colorable claim of a constitutional violation, and fails to establish that she received ineffective assistance of counsel under the *Strickland* standard. Accordingly, her motion for postconviction relief is

DENIED.

IT IS SO ORDERED

Judge Calvin L. Scott, Jr.

²¹ See *State v. Stuart*, 2008 WL 4868658, *3 (Del. Super. Oct. 7, 2008) citing *Savage v. State*, 815 A.2d 349 (Del. 2003).