

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

STATE OF DELAWARE,)	
)	
v.)	ID#: 0711003670 & 0712004216
)	
LEKEVIS WILLIAMS,)	IN-08-02-1189R1, 2167R1,
Defendant.)	0853R1, 0855R1, 0856R1,
)	0858R1, 0860R1, 0862R1,
)	2276R1, 2278R1

Submitted: July 6, 2009
Decided: October 23, 2009

Upon Defendant’s Motion for Postconviction Relief –
SUMMARILY DISMISSED

1. On May 12, 2008, Defendant pleaded guilty to two counts of robbery first degree, two counts of robbery second degree, and seven counts of conspiracy second degree.

2. Defendant confessed to the police and repeatedly told the court that he was the “getaway driver” for a string of armed robberies committed by his co-defendant. (The co-defendant also confessed and pleaded guilty).

3. The plea colloquy was extensive, taking more than twenty minutes. While much of the colloquy was consumed with reviewing the many crimes to which Defendant was pleading, the colloquy also included the court’s repeatedly

asking Defendant if he actually committed the crimes and was, in fact, guilty. The colloquy also included the court's repeatedly warning Defendant that once the plea was entered, "it will be [] impossible to back out of it." Defendant acknowledged the warnings at least three times. Additionally, the court repeatedly asked Defendant if he had any questions about what he was doing. Defendant had none.

4. Despite the court's specific warnings that "if tomorrow you decide you made a mistake, it will be too late to back out," and "the court will not be interested in any letter or motion you file . . .," on July 6, 2009, Defendant filed this motion for postconviction relief.

5. Meanwhile, Defendant did not file a direct appeal from his guilty plea and his August 8, 2008 sentencing, nor from anything leading up to them.

6. Consistent with Superior Court Criminal Rule 61(d)(1), the Prothonotary referred the motion appropriately for preliminary consideration.

7. Along with other grounds, discussed below, Defendant alleges that he "was mis-lead into this plea agreement[,] because he "was promised the 6 years and the [sentencing] judge gave [Defendant] 8 years." Defendant further alleges that the plea was "coerced" because his attorney told him that "he would have no defense. . . ." Finally, as to Defendant's claims that his plea was not knowing, voluntary and intelligent, Defendant alleges, with no elaboration, that "prescribed

medications . . . affected his ability on how to plea.” Defendant, inaccurately, faults the court for failing to make “on-record determination whether Defendant was under influence of medication[.]” Defendant nowhere identifies the medications to which he refers, much less the dosage. Nor does he identify the mental condition for which the medication was prescribed.

8. Before accepting Defendant’s guilty plea, the court confirmed that Defendant had carefully and honestly answered the questions on the standard Truth-In-Sentencing Guilty Plea form. According to the form he signed, Defendant had never been in a mental hospital and he was not under the influence of alcohol or drugs at the time of the plea. Moreover, the court began the plea colloquy by asking Defendant if he had any drugs or alcohol within the 24 hours before the plea. Defendant, again, assured the court that he had not had any drugs. Most importantly, although he was not talkative, Defendant gave no indication that his thinking was affected by medication when he pleaded guilty. To the contrary, he answered all the court’s many questions appropriately.

9. Comparing all the evidence supporting the finding that Defendant was clear-headed against the scant, self-serving, conclusory allegation to the contrary, the court finds it highly unlikely that Defendant repeatedly lied to the court during the colloquy and, in truth, his plea was influenced by the unspecified

prescribed medication allegedly taken for an unspecified condition in an unspecified amount.

10. All Defendant's other claims about his plea not being knowing, voluntary or intelligent are also flatly refuted by the record. For example, the court asked Defendant, orally and in writing, whether anyone had promised him what his sentence would be. Moreover, the court specifically told Defendant that he could receive a sentence from "six to 74 years in prison, or anything in between."

11. Finally, as to whether the plea was knowing, voluntary and intelligent, as discussed in detail below, the plea's context made sense. Taking everything into account, even though the plea meant at least six years in prison, or more, it was not a bad bargain.

12. For the foregoing reasons, the court stands by its May 12, 2008 finding that Defendant's guilty plea was knowing, voluntary and intelligent. That being so, Defendant waived the other claims presented in the motion for postconviction relief, such as Defendant's claim that his confession was coerced.¹

13. To the extent that it might be said that Defendant's guilty plea, including his repeated admissions of actual guilt, do not trump his motion for

¹ See *Johnson v. State*, 2008 WL 4830853 (Del. Supr. Nov. 7, 2008); *Rubino v. State*, 2009 WL 189147 (Del. Supr. Jan. 15, 2009).

postconviction relief, the motion is procedurally barred under Superior Court Criminal Rule 61(i)(3), and the motion is subject to summary dismissal under Superior Court Criminal Rule 61(d)(4). That includes Defendant's claim of ineffective assistance of counsel.

14. When Defendant pleaded guilty, the court gave Defendant several opportunities to complain that his confession was coerced, that he never intended to commit robbery first degree, and that his lawyer was ineffective. And so, because those grounds for relief were not asserted in the proceedings leading to the judgment of conviction, they are barred. That is, unless Defendant shows cause for relief from his procedural default and prejudice from violation of his rights.²

15. Other than his vague, unsupported claim that he was under the influence of prescribed medication, Defendant has offered no explanation for why he did not assert the grounds for relief during the plea colloquy or through a direct appeal. Moreover, as explained next, Defendant has not shown prejudice from violation of his rights.

16. Assuming his confession to the police was coerced, which it probably was not, the direct and circumstantial evidence against Defendant, reflected

² Super. Ct. Crim. R. 61(i)(3)(A-B).

in the affidavit of probable cause, was highly incriminating. Defendant was arrested because the robbery victims and a surveillance video identified the 1995 Volvo that was registered to Defendant's relatives, and which he was driving when arrested. The police found the robbery weapon in the car, and the co-defendant named Defendant as the driver. All of that is without Defendant's confession.

17. While Defendant now claims for the first time that he confessed because he was under the influence of an unspecified amount of alcohol, he was able to accurately describe the robberies, the weapon and the co-defendant. Significantly, when he was questioned by the police, Defendant admitted that he knew his co-defendant "did use a small handgun on each of the . . . robberies"

18. In the unlikely event that Defendant's confession had been suppressed and that the jury somehow doubted Defendant knew his co-defendant was displaying a deadly weapon during the robberies,³ Defendant almost certainly would have been convicted of at least six counts of robbery second degree, six counts of conspiracy second degree and possession of a deadly weapon by person prohibited. Taking into account the nature of the offenses – a string of convenience store or gas stations robberies – and Defendant's status as a probationer when he committed those

³ See *Allen v. State*, 970 A.2d 203 (Del. 2009).

crimes, going to trial would have resulted, at best, in a harsher sentence than the plea agreement generated. And, in the likely event Defendant had been found guilty as charged, the prison sentence would have been at least twice as long. That is why, taking everything in account, Defendant cannot show prejudice.

19. Finally, as to the grounds for Defendant's postconviction relief motion, Defendant's ineffective assistance of counsel claim is based on trial counsel's alleged failure "to investigate whether [Defendant] was on medications and possible side effects." If Defendant was under the influence of the unspecified "possible side effects" of the unspecified medication, prescribed by an unnamed physician, Defendant should have raised the issue sooner than fourteen months after he pleaded guilty. Defendant could have raised his claim about being under the influence when he pleaded guilty, when he was sentenced in August 2008, or through a direct appeal. Instead, Defendant first chose to pursue a motion for sentence reduction. Only after the sentencing judge refused to reduce the sentence did Defendant first announce that his guilty plea was the product of prescribed drugs, he confessed due to alcohol, and so-on.

For the foregoing reasons, Defendant's July 6, 2009 Motion for Postconviction Relief is subject to summary dismissal because his grounds for relief have been waived and, were that not so, the motion is procedurally barred.

Accordingly, the Motion for Postconviction Relief is **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

oc: Prothonotary
pc: John Barber, Deputy Attorney General
Lekevis Williams, Defendant