

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

STATE OF DELAWARE,)	
)	
v.)	ID#: 0809014770
)	
DANIEL DeJESUS,)	
Defendant.)	

Submitted: August 24, 2009
Decided: November 12, 2009

ORDER

**Upon Defendant's First Motion for Postconviction Relief –
*SUMMARILY DISMISSED***

1. Defendant pleaded guilty at final case review on February 2, 2009, to possession with intent to deliver marijuana. Consistent with the plea agreement, the court immediately sentenced Defendant to prison, but suspended the sentence for work release. And, the court allowed Defendant to be held at Level 3 while waiting for work release. Simply put, Defendant got probation.

2. The sentence order further gave the Department of Correction discretion to by-pass work release if Defendant was doing well. The rationale for that,

in part, relied on Defendant's having already received a long prison sentence for the associated violation of probation.

3. The plea colloquy was extensive. Defendant admitted his guilt, twice. He acknowledged there were no promises as to sentence. Defendant also said he was satisfied with counsel and his plea was voluntary. Defendant had no questions for the court.

4. Defendant did not file a direct appeal. Instead, on August 24, 2009, Defendant filed this, his first motion for postconviction relief. The Prothonotary properly referred the motion for preliminary review,¹ and, as explained below, the motion is subject to summary dismissal.²

5. Now, Defendant says his plea was due to "coercion," as "[c]ounsel told petitioner to take plea, because he would do modification of sentence for him." Defendant also protests that "[d]rugs were found in Brother[']s room, not petitioner[']s room. Probation & Parole did not have legal right to search his brother['s] room"

6. Defendant's motion does not undermine the court's original

¹ Super. Ct. Crim. R. 61(d)(1).

² Super. Ct. Crim. R. 61(d)(4).

finding that the plea was knowing, voluntary and intelligent. Accordingly, Defendant waived any claims³ concerning the things leading up to and the entry of the guilty plea.

7. Moreover, by not challenging the things leading up to the guilty plea and sentencing, and by not filing a direct appeal, Defendant's motion is procedurally defaulted.⁴ Defendant has not attempted to show cause or prejudice.⁵

8. In closing, it is not clear why Defendant filed this motion, having received probation. Perhaps Defendant believes this sentence has some bearing on the violation of probation sentence. Perhaps Defendant does not want this conviction on his record. Perhaps Defendant erroneously believes he can avoid probation after he completes the prison sentence for the violation of probation.⁶ Whatever Defendant's reasons are, as explained above, Defendant's claims are now waived and barred.

³ *Johnson v. State*, 2008 WL 4830853 (Del. Supr. Nov. 7, 2008).

⁴ Super. Ct. Crim. R. 61(i)(3).

⁵ Super. Ct. Crim. R. 61(i)(3)(A-B).

⁶ *See* 11 *Del. C.* §4204(1).

For the foregoing reasons, Defendant's motion for postconviction relief is **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary (criminal)
Colleen Norris, Deputy Attorney General
Daniel DeJesus, Defendant