

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID. No. 0701010111
)	
RYAN RESOP,)	
)	
Defendant.)	
)	

Submitted: October 3, 2009

Decided: October 7, 2009

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF SHOULD BE
DENIED.**

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

Michael C. Heyden, Esquire, 1201 King Street, Wilmington, Delaware 19801.

Ryan Resop, Delaware Correctional Center, Smyrna, Delaware, *pro se*.

PARKER, Commissioner

This 7th day of October, 2009, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. Defendant Ryan Resop pled guilty on September 17, 2007 to three counts of Robbery First Degree, two counts of Assault Second Degree and one count of Conspiracy Second Degree. On November 9, 2007, Defendant was sentenced to 28 years at Level V suspended after 11 years, followed by 6 months at Level IV Probation, followed by 18 months Level III.

2. Defendant Resop did not file a direct appeal to the Delaware Supreme Court.

3. The facts giving rise to this action reveal that the Defendant was indicted on eight counts of Robbery First Degree, two counts of Attempted Robbery First Degree, eight counts of Conspiracy Second Degree, two counts of Assault Second Degree and six counts of Wearing a Disguise During a Felony. The crimes occurred between December 27, 2006 and January 11, 2007. Resop was charged with robbery and related crimes associated with a number of robberies involving gas stations, mini marts, a pizza delivery man, a nail studio and other retail establishments. Included among the charges were the following robberies and related crimes.

4. On January 10, 2007, Defendant Resop along with Jarrell C. Crawley tried to rob the Chelsea BP gas station and convenience store in New Castle, Delaware. They were wearing masks and gloves. Crawley pointed a BB gun at the clerk and Resop demanded money. While the clerk was backing away from the cash register, Crawley shot him in the hand with the BB gun. The clerk retreated to an office and locked himself inside. Resop and Crawley fled without taking anything.

5. Fifteen minutes later, Resop and Crawley went into the Moores Lane Citgo and stole cigarettes and about \$200 in cash. In the course of that robbery, Crawley shot the clerk in the eye and Resop punched him.

6. The next day, on January 11, 2007, Resop and Crawley robbed Jay's Market in Newark, Delaware. The police were notified and given a description of the suspects and their vehicle, a green Mitsubishi Montero, and the police apprehended them, after a high speed chase. During the high speed chase, a mask and weapon were seen being thrown from the car and were later recovered. Resop was removed by the police from the passenger seat of the car. Inside the vehicle, the police found items stolen from Jay's Market.

7. At the times of the crimes, Defendant Resop was on probation and had been issued a Global Positioning Satellite (GPS) ankle device by Probation and Parole. Using a GPS system, the police were able to track Defendant Resop's travels over the period of time that the robberies occurred. Through investigation the Defendant's GPS ankle device showed that the Defendant had been at the location of other robberies on the date and time they occurred. Additionally, there was eyewitness testimony and video surveillance that implicated Defendant Resop to the robberies and related crimes.

8. On September 12, 2007, Defendant's counsel filed a Motion in Limine to exclude the testimony concerning Defendant's movements learned through the GPS system. On September 14, 2007, the Court ruled that with the admission of certified bench notes that the GPS device was working properly the evidence would be admitted. The jury was selected for trial on September 5, 2007, and the testimony was to begin on September 17, 2007.

9. Prior to trial, on September 17, 2007, Defendant Resop reached a plea agreement with the State. As a result of the plea, he was sentenced to 11 years at Level V. The co-defendant, Jarrell Crawley, did not take a plea and went to trial. He was convicted and sentenced to over 21 years at Level V.

10. On October 6, 2008, Defendant filed this motion for postconviction relief. Defendant raises four grounds as the basis for the subject motion. Defendant raises the following: (1) he was denied his right to confront witnesses, mainly Tracy Lewis of Probation and Parole; (2) his rights were violated in a prior sentencing; (3) suppression of favorable evidence; and (4) ineffective assistance of counsel.

11. Defendant, however, waived his right to assert the first three claims that he seeks to raise in his postconviction motion, when he entered his guilty plea. Defendant's voluntary guilty plea waived his right to challenge any alleged errors or defects occurring prior to the entry of his plea.¹ Defendant had the opportunity to go to trial and litigate all of these issues. Defendant knew he was waiving these issues when he pled guilty. Defendant signed a Truth-In Sentencing Guilty Plea Form in which he acknowledged that by pleading guilty he would not have a trial and therefore waived his constitutional rights to confront witnesses, present evidence, testify and appeal any decisions.²

12. Moreover, before accepting Defendant's plea, the Court confirmed that Defendant understood he was waiving his right to raise any constitutional or evidentiary challenges that may have existed prior to the entry of his guilty plea.³

13. A defendant is bound by his answers on the guilty plea form and by his testimony at the plea colloquy in the absence of clear and convincing evidence to the contrary.⁴

¹ *Mojica v. State*, 2009 WL 2426675 (Del. 2009); *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2004).

² Truth-In Sentencing Guilty Plea Form dated September 17, 2007.

³ Plea Colloquy Transcript, at pgs. 7-10.

The record before the Court, including Defendant Resop's own statements, establish that Defendant Resop knowingly, voluntarily and intelligently entered a guilty plea on September 17, 2007, and waived his right to challenge any alleged errors or defects occurring prior to the entry of his plea. The first three claims that Defendant seeks to raise in his postconviction motion were waived by his guilty plea.

14. In addition, the first three claims are also procedurally barred, pursuant to Superior Court Criminal Rule 61(i)(2) & (3), since these claims were not raised in a prior postconviction proceeding.

15. Turning to the fourth claim, ineffective assistance of counsel, Defendant essentially contends that his counsel was ineffective because his counsel strongly encouraged him to accept the plea agreement and that he reviewed the plea agreement with Defendant's mother and urged her to encourage Defendant to accept the plea agreement.

16. The specific allegations raised by Defendant Resop fail to state attorney misconduct. Defendant has not explained how his counsel's actions can be deemed ineffective. The evidence against Defendant Resop on various robberies was strong. Defendant Resop and his co-defendant were apprehended after a high speed chase after fleeing from a robbery at Jay's Mart. Defendant was pulled from the car, a green Mitsubishi Montero. The police found proceeds from the robbery in the car and the police recovered a BB gun, mace and a mask that had been thrown from the car during the high speed chase. Defendant was also placed at the scene of the two robberies that

⁴ *State v. Harden*, 1998 WL 735879, *5 (Del. Super.); *State v. Stuart*, 2008 WL 4868658, *3 (Del. Super. 2008).

occurred the day before. Defendant could have been sentenced to up to 25 years for each one of these robberies.

17. Defendant accepted the plea agreement and was sentenced to 11 years at Level V. Defendant's co-defendant, did not accept a plea agreement, and was sentenced to over 21 years at Level V. Defense counsel's advice to take the plea does not appear to be deficient in any regard.

18. To prevail on an ineffective assistance of counsel claim, the defendant must show that his counsel's efforts "fell below an objective standard of reasonableness" and that, but for his counsel's alleged errors, there was a reasonable probability that the outcome would have been different.⁵ Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.⁶ There is a strong presumption that counsel's conduct fell within a wide range of reasonable professional assistance.⁷

19. Here, Defendant's ineffective assistance claims are undermined by the record and fail to satisfy *Strickland*. Defendant fails to state a legitimate ground for relief against his counsel. The record in this case reflects that Defendant Resop understood the nature of the plea and its consequences, was satisfied with the representation provided by counsel, and knowingly, intelligently and voluntarily entered the plea. Indeed, Defendant in his signed Truth-In Sentencing Guilty Plea Form expressly represented that nobody, not his

⁵ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

⁶ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

⁷ *Albury v. State*, 551 A.2d 53, 59 (Del. 1988); *Salih v. State*, 2008 WL 4762323, at *1 (Del. 2008).

attorney, the State, nor anyone else, threatened or forced him to enter his guilty plea. He further represented that his plea was entered into freely, knowingly and voluntarily.⁸

20. Given the strong evidence against his client, defense counsel negotiated the best offer he could for the Defendant. Moreover, defense counsel, in his Affidavit, advised that he spoke to Defendant's mother at Defendant's desire and request.

21. Defense counsel's representation of Defendant was reasonable and Defendant cannot establish that he would have received a lesser sentence if he proceeded to trial. Defendant is serving 11 years at Level V, his co-defendant who did not accept a plea and went to trial is serving over 21 years at Level V. Defendant has failed to satisfy either prong of the *Strickland* test, and therefore, his claims of ineffective assistance of counsel fail.

22. In this case, Defendant has failed to overcome any of the procedural bars by showing a "colorable claim that there was a miscarriage of justice" or that "reconsideration of the claim is warranted in the interest of justice." The "miscarriage of justice" exception is a "narrow one and has been applied only in limited circumstances."⁹ The defendant bears the burden of proving that he has been deprived of a "substantial constitutional right."¹⁰ The Defendant has failed to provide any basis, and the record is devoid of, any evidence of manifest injustice. The Court does not find that the "interests of justice" require it to consider the otherwise procedurally barred claims for relief.¹¹

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied.

⁸ Truth-In Sentencing Guilty Plea Form dated September 17, 2007.

⁹ *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

¹⁰ *Id.*

¹¹ *Id.*

IT IS SO RECOMMENDED.

Commissioner Lynne M. Parker

cc: Prothonotary