SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

N440 STATE MAIL
David R. Wright
SBI: 001
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: ***State of Delaware v. David R. Wright***
Def. ID No. 080203870

Submitted: March 11, 2010
Decided: March 17, 2010

Dear Mr. Wright,

Pending before me is your Motion for Postconviction Relief filed pursuant to Super. Ct. Crim. R. 61 ("Rule 61"). You have raised four issues which you phrase in terms of ineffective assistance of counsel under *Strickland v. Washington*[1] *("Strickland")*. For the reasons explained below, your motion is Summarily Dismissed.[2]

In making a claim for ineffective assistance of counsel under *Strickland*, a

[1]466 U.S. 668 (1984).

[2]*See* Rule 61(d)(4).

defendant has the burden of showing (1) deficient performance by counsel (2) which caused defendant actual prejudice.[3] Deficient performance means that the attorney's representation fell below an objective standard of reasonableness.[4]

On January 28, 2008, you were arrested in connection with a robbery and kidnapping that occurred at the Lewes/Rehoboth Moose Lodge on December 31, 2007. In November 2008, you went to trial on charges of First Degree Robbery, Possession of a Firearm During the Commission of a Felony, Second Degree Kidnapping, Wearing a Disguise During the Commission of a Felony, Possession of a Deadly Weapon by a Person Prohibited,[5] and Third Degree Assault.[6] You were convicted of the remaining charges and declared to be a habitual offender under 11 *Del. C.* § 4214(a). You were sentenced to a total of 74 years in prison. On direct appeal, your conviction and sentence were affirmed.[7] You have now filed for postconviction relief.

Your first claim of error is that the warrantless search of your van after it was impounded was a violation of the Fourth Amendment guarantee against unreasonable searches and seizures. You argue that trial counsel was ineffective for failing to determine that the search occurred after impoundment and for failing to prevail on his

---

[3] *Strickland*, at 688, 694.

[4] *Id.* at 688.

[5] Stipulated to by the parties.

[6] *Nolle prossed* by the State.

[7] *Wright v. State*, 980 A.2d 372 (Del. 2009).

objection to admission of what you call an illegal inventory search. This argument has no merit. The United States Supreme Court has held that when police officers have probable cause to believe there is contraband inside an automobile the officers may conduct a warrantless search even after the vehicle is in police custody and is impounded.[8] You have not argued, nor could you, that Detective Chambers did not have probable cause to search your van after it was impounded. This claim for relief fails.

You also argue that trial counsel was ineffective for failing to object to the evidence obtained when Detective Chambers utilized one of your cell phones to determine whether it was stolen, without benefit of a search warrant. At trial, I ruled that the cell phones left in your sister's house were abandoned and therefore it was permissible for Detective Chambers to scroll through the one in working condition to determine ownership. Your sister had moved certain items, including the phones, from her house to her shed and turned them over to police when asked to do so. The Court finds that your act of leaving the phones in her house when you departed constitutes abandonment[9] and that there was no Fourth Amendment violation or ineffectiveness on the part of your attorney.

You also challenge the search warrants dated 1/4/08 and 2/11/09. You claim that both affidavits were flawed because an informant reported knowledge of a person being

---

[8] *Michigan v. Thomas*, 458 U.S. 259, 261 (1982); *U.S. v. Johns*, 469 U.S. 478, 484 (1985).

[9] *Jackson v. State*, 2009 WL 2006879 (Del.); *State v. Poteat*, 2005 WL 914472 (Del.).

in possession of $6000, whereas you were in possession of $4000. The warrants contain a wealth of information in addition to the statements made by the informant, including the location of your van near the Moose Lodge, your identification card, information about your shotgun, your possible temporary residence, as well as a threatening phone message sent from one of your cell phones. Despite this information, you allege that the affidavits are conclusory and that there was no police action independent of the informant's assertions. You assert that both trial counsel and appellate counsel were ineffective for failing to raise this issue. Please recall that on December 31, 2007, Detective Chambers took a statement from Richard Steck, the victim, and had your van in police possession. The information provided by Mr. Steck was consistent with the information in the search warrants, which was gathered by the police. The Court finds that the four corners of the search warrants set forth adequate facts for the magistrate to form a reasonable belief that an offense had been committed and that the property to be seized would be found in the specified place.[10] There is no merit to your claim as to either search warrant.

Your final claim of error is that appellate counsel was ineffective for not arguing on appeal that this Court erred in failing to suppress the information obtained when Detective Chambers checked your cell phone for ID prior to having a search warrant. This Court ruled that the phone was abandoned because the phone was in a pile of items which your sister found in her home and which did not belong to her. That ruling stands.

---

[10] *Morgan v. State*, 962 A.2d 248 (Del. 2008).

You have not shown that appellate counsel was ineffective for not raising this issue, nor have you made a showing of prejudice arising from Detective Chambers' ID of the phones, other than vague and conclusory assertions. This claim has no merit.

Defense counsel has not been asked to submit an affidavit because in your case prejudice cannot be established under the second prong of the *Strickland* standard. I conclude that it plainly appears from your motion and the record of the proceedings that you are not entitled to relief, as set forth in Rule 61(d)(4).

Therefore, your Motion for Postconviction Relief is **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary
Melanie C. Withers, Esquire
Robert Robinson, Esquire