IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 0312019673
	)	
EMIL WATSON,	)	
	)	
Defendant.	)	

Submitted: January 13, 2010
Decided: April 28, 2010

On Defendant's Third *Pro Se* Motion for Postconviction Relief. DENIED.

ORDER

Renee L. Hrivnak, Deputy Attorney General, Wilmington, Delaware 19801.

Emil Watson, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna, Delaware 19977. *Pro se.*

CARPENTER, J.

On this 28th day of April 2010, upon consideration of Defendant's Third *Pro Se* Motion for Postconviction Relief, it appears to the Court that:

1. Emil Watson (the "Defendant"), has a filed his Third *Pro Se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). For the reasons set forth below, the Defendant's Third *Pro Se* Motion for Postconviction Relief is DENIED.

2. The Defendant was indicted on March 8, 2004 on the following charges: (1) Trafficking Cocaine; (2) Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance; (3) Use of a Vehicle for Keeping Controlled Substances; (4) Conspiracy Second Degree; and (5) Possession of Drug Paraphernalia. A jury trial was held from August 17 – 19, 2004 in which the Defendant proceeded *pro se*, and on August 20, 2004, the Defendant was found guilty of all charges. The Supreme Court affirmed the Defendant's convictions on November 28, 2005.[1] Defendant then filed his First *Pro Se* Motion for Postconviction Relief on November 13, 2006. It was denied by the Superior Court on June 28, 2007[2] and affirmed by the Supreme Court on March 12, 2008[3]. Defendant then filed his Second *Pro Se* Motion for Postconviction Relief on September 15, 2008. The Superior Court denied this second

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[1] *Watson v. State*, 892 A.2d 366 (Del. 2005).
[2] *State v. Watson*, 2007 WL 2029302 (Del. Super. June 28, 2007).
[3] *Watson v. State*, 945 A.2d 595 (Del. 2008).

motion on December 23, 2008.[4] Before the Court is Defendant's Third *Pro Se* Motion for Postconviction Relief.

3. In the present Motion before the Court, Defendant asserts that newly discovered evidence warrants a review of his claim. Specifically, the Defendant argues that the new evidence[5] "along with a note" was sent to Defendant from someone in the Public Defender's office, informing Defendant that his February 24, 2004 plea offer was "never turned over (or) discussed with the State."[6] It appears Defendant is contending ineffective assistance of counsel based on this new evidence since his petition states that this information establishes "inadequate representation provided" by his trial counsel.[7]

4. Prior to addressing the merits of a postconviction relief claim, the Court must first determine whether the Motion meet the procedural requirements of Rule 61(i).[8] This section of Rule 61 sets forth certain parameters governing the proper filing of a motion for postconviction relief: (1) the motion must be filed within one year of the final judgment of conviction; (2) any ground for relief not raised in a prior postconviction motion will be barred if raised in the instant Motion; (3) any claims

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[4] *State v. Watson*, No. 0312019673 (Dec. 23, 2008).
[5] *See* Def.'s Mot. at Ex. A.
[6] *Id.* at 3.
[7] *Id.*
[8] *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

which show cause for relief from the procedural default and prejudice from violation of the movant's rights; and (4) any ground for relief raised in this Motion must not have been formerly adjudicated in any proceeding lead to the conviction, unless the interest of justice requires reconsideration.[9]

5. In applying the procedural impediments to this case, Defendant's claim is untimely under the one year of final judgment deadline set forth under Rule 61(i)(1). Defendant's conviction was affirmed by the Supreme Court on November 28, 2005, thus under Rule 61(i)(1), Defendant must have filed this motion by November 28, 2006. Defendant's present motion was filed on October 20, 2009, almost 4 years after the deadline. Furthermore, Defendant's claim is procedurally barred under Rule 61(i)(3). This section of Rule 61 bars claims for relief that were not asserted in the proceedings below, unless the defendant can show cause and prejudice. The Court will review the Defendant's petition in this light.

6. It appears that the Defendant first contends the new evidence provides an argument for ineffective assistance of counsel because a plea agreement dated February 24, 2004 was never returned to the State so that the plea could be entered.[10] Generally, the right to counsel attaches during "critical stages" of the criminal

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[9] *State v. Greer*, 2008 WL 1850625 (Del. Super. Mar. 4, 2008).

[10] Def.'s Mot. at 3 (stating: "[t]his newly discovered evidence clearly demonstrates Mr. James Bayard's actions resulting in the Defendant's decision to go pro-se at trial and establishes the inadequate representations provided").

process[11] and Courts have held that the decisions relating to a plea bargain offer are vitally important decisions and a critical stage at which the right to effective assistance of counsel attaches.[12] Thus, the Court will review the merits of the claim because it finds a potential showing of "cause and prejudice" under Rule 61(i)(3).

7. To prevail on an ineffective assistance of counsel claim, the two-part test articulated by the United States Supreme Court in *Strickland v. Washington* must be satisfied.[13] Under the first prong of *Strickland* the Defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, with reasonableness being judged under professional norms prevailing at the time counsel rendered assistance.[14] Second, the Defendant must show that counsel's performance was prejudicial to his defense.[15]

8. The Court finds it difficult to believe that the plea agreement attached to the Defendant's most recent petition is "newly discovered" as it appears to be signed by the Defendant and dated February 24, 2004. A review of the docket reveals that on February 24, 2004 the Defendant was scheduled for a fast track calendar and it would have been consistent with the practices at that calendar that a plea offer would have been made by the State. The Court believes based upon its

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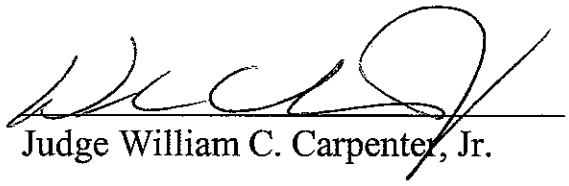
[11] *United States v. Zelinsky*, 689 F.2d 435, 438 (3d Cir. 1982)(citing *U.S. ex rel. O'Brien v. Maroney*, 423 F.2d 865 (3d Cir. 1970)).
[12] *Id.* (citing *Gallarelli v. United States*, 441 F.2d 1402 (3d Cir. 1971)).
[13] 466 U.S. 668 (1984).
[14] *Id.* at 687-88.
[15] *Id.* at 687.

numerous interactions with the Defendant that he had no interest in a plea agreement at that time and even if he signed it, changed his mind and decided to proceed to trial. The Defendant had several opportunities to enter into a plea agreement since the February 24, 2004 proceeding and failed to do so. The fact is that the Defendant did not believe he was guilty of the offense, had no interest in negotiating a plea, and in spite of the serious nature of the offense and the significant possible consequences if convicted, decided to proceed to trial as his own counsel. While there is no question he was unhappy with his trial counsel, the failure to accept the plea agreement on February 24, 2004 and resolve his pending violation of probation together with the new offense was simply one of many foolish decisions made by him during this litigation. The Court is confident that if the Defendant wanted to plea his case, his trial counsel would have welcomed the opportunity to resolve the matter of a very difficult client. His trial counsel did nothing wrong here and the Defendant has only himself to blame for the situation he now finds himself in. The Court finds no merit to this claim.

9. Defendant's Motion also requests a new trial based on the newly discovered evidence. Besides being untimely and procedurally barred, the Court has found the Defendant's new evidence claim has no validity, and the Court will also deny this request.

10. For the reasons set forth above, the Defendant's Third *Pro Se* Motion for Postconviction Relief is hereby DENIED.

IT IS SO ORDERED.



Judge William C. Carpenter, Jr.