

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
Wayne A. King
SBI# 002
Sussex Correctional Institution
P.O. Box 500
Georgetown, DE 19947

Re: ***State of Delaware v. Wayne A. King***
ID 0908004017

Submitted Date: May 24, 2010
Decided Date: May 27, 2010

Dear Mr. King,

Pending before me is your first motion for postconviction relief, filed pursuant to Super. Ct. Crim. R. 61 ("Rule 61"). For the reasons explained below, your motion is summarily dismissed.¹

On November 24, 2009, you entered a guilty plea to one count of Robbery First Degree, one count of Assault Second Degree, one count of Conspiracy Second Degree and one count of Possession of a Firearm During the Commission of a Felony. After conducting a plea colloquy, I found that you entered a knowing, intelligent and voluntary guilty plea, and I accepted that plea.² The State moved and I so found you to be a habitual offender, pursuant to 11 *Del. C.* § 4214(a). You were sentenced to a mandatory term of five years at Level 5 on the firearms charge; one year at Level 5 on the conspiracy charge; four years at Level 5 on the robbery charge, to be followed by Level 4 home confinement and probation. You did not file a direct appeal, and your conviction therefore became

¹See Rule 61(d)(4).

²See Transcript of Proceedings (Nov. 24, 2009) at 17.

final on December 24, 2009. You now seek to withdraw your guilty plea.

This is your first postconviction relief motion, and it was timely filed. Because this is your first postconviction relief motion and because you argue ineffective assistance of counsel, the procedural bars of Rule 61 do not apply.³

You argue first that defense counsel was ineffective for failing to file a motion to suppress the text messages which the police obtained from your co-defendant's cell phone, and which were used to implicate you in the crimes to which you pled guilty. You allege that you asked counsel to file such a motion before you entered your plea and that he took no action. I infer the remainder of your argument to be that you would have proceeded to trial if defense counsel had prevailed on the motion and that the outcome of the trial proceedings would have been different. Thus, you seek to withdraw your guilty plea.

In the context of a guilty plea challenge, *Strickland v. Washington*⁴ requires you to show that counsel's representation fell below an objective standard of reasonableness. Further, you must show that there is a reasonable probability that but for counsel's errors, you would not have pled guilty but would have insisted on going to trial.⁵ Your specific argument is that the search warrant used to seize your co-defendant's cell phone was defective because it was not signed by a magistrate or other neutral officer. That is, you raise the issue of an unreasonable search under the Fourth Amendment which you contend defense counsel should have raised.

In addressing Fourth Amendment protection, the appropriate inquiry is whether the defendant "personally has an expectation of privacy in the place searched and that his expectation is reasonable."⁶ You have not shown, nor can you show, that you have a personal or reasonable expectation of privacy in the contents of your co-defendant's cell phone, in which you had no possessory interest and which was not in your possession at the time it was seized. As such, you have no protection from the Fourth Amendment in

³See Rule 61(I).

⁴466 U.S. 668 (1984).

⁵*State v. Thompson*, 2003 WL 21244679, at *1 (Del. Super.).

⁶*State v. Manuel*, 2009 WL 1228573, at *3 (Del. Super.)(citing *Minnesota v. Carter*, 525 U.S. 83, 88 (1998)).

regard to the phone or the use which the police made of it.⁷ Defense counsel's decision not to file a suppression motion on this issue was not objectively unreasonable, nor can you show prejudice stemming from his decision not to file the suppression motion. Your first ground for relief has no merit.

Your second argument is that defense counsel was constitutionally ineffective for failing to file a motion to sever. However, you have not explained which charges should have been severed from which other charges, or why. Conclusory claims that are unsupported by concrete allegations of actual prejudice are subject to summary dismissal.⁸ This ground for relief has no merit.

For sure, "[t]here is a 'strong presumption' that counsel's representation was professionally reasonable."⁹ Assuming for argument's sake only, that counsel erred as you assert, again, you have failed to show how the outcome of the proceedings would have been better had you gone to trial rather than take the plea offer.

For these reasons, your motion for postconviction relief is **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

Original to Prothonotary

⁷*State v. Mooney*, 588 A.2d 145 (Conn.), *cert. denied*, 502 U.S. 919 (1991)(absent Fourth Amendment protection, subsequent police action has no constitutional ramifications).

⁸*Jordan v. State*, 648 A.2d 424 (Del. 1994); *State v. Childress*, 2001 WL 1610766, at *1 (Del. Super.).

⁹ *Runyon v. State*, Del. Supr., No. 369, 2008, Jacobs, J. (March 4, 2009) at 4 [Footnote and citation omitted.].