

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

JOSE D. BEZAREZ

Defendant

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)  
) I.D. No. 0702002298  
)  
)  
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)

Submitted: April 15, 2010

Decided: June 22, 2010

Upon Defendant's Motion for Postconviction Relief.

**DENIED.**

**ORDER**

John A. Barber, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for the State

Jose D. Bezarez, Smyrna, Delaware, *pro se*

COOCH, J.

This 22nd day of June, 2010, upon consideration of Defendant's  
motion for postconviction relief, it appears to the Court that:

1. On March 19, 2007, Defendant, Jose Bezarez, was indicted on four  
counts of Reckless Endangering First Degree stemming from a shooting that

occurred at an apartment building in New Castle.<sup>1</sup> Defendant allegedly discharged a firearm in an apartment located directly above the victims' apartment and the bullets from Defendant's weapon pierced the ceiling of the victims' apartment while the victims were inside of their apartment.<sup>2</sup> Defendant subsequently entered a *nolo contendere* plea to one count of Reckless Endangering First Degree and was sentenced to two years of incarceration at Level V.<sup>3</sup>

2. Defendant has now filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61. Defendant alleges that his attorney Dade D. Werb was ineffective because "[Mr. Werb] did not investigate or question[] key witness or other witness that was in key witness home about what was seen or questioned to find out if movant was innocent of charges. Counsel just wanted to movant to sign a plea of *nolo contendere*."<sup>4</sup>

3. In the present case, Defendant has waived any claim of ineffective assistance of counsel that occurred prior to the entry of his *nolo contendere* plea. The Delaware Supreme Court "has long held that a voluntary guilty

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<sup>1</sup> Ans. Br. at 1.

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* at 1.

<sup>4</sup> Mot. for Postconviction Relief at 2.

plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea.”<sup>5</sup>

Here, Defendant argues that counsel was ineffective in failing to interview certain witnesses. This claim implicates potential errors that occurred prior to Defendant’s entry of his *nolo contendere* plea. Defendant does not allege that his *nolo contendere* plea was involuntary, and the plea colloquy conducted in connection with Defendant’s acceptance of the plea demonstrates that Defendant entered the plea “freely and voluntarily:”

THE COURT: Have you freely and voluntarily decided to plead *nolo contendere* to the charge listed in your written plea agreement?

THE DEFENDANT: Yes, sir.

THE COURT: Have you been promised anything that is not stated in your written plea agreement?

THE DEFENDANT: No, sir,

THE COURT: Has your attorney, the State or anyone threatened or forced you to enter this plea?

THE DEFENDANT: No, sir.<sup>6</sup>

Because Defendant’s claim implicates events occurring prior to the voluntary entry of his *nolo contendere* plea, Defendant’s claim of ineffective assistance of counsel has been waived.

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<sup>5</sup> *Alexander v. State*, 2008 WL 4809624, at \* 1 (Del. Supr.) (citing *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003)); *Lecates v. State*, 2003 WL 1733557, at \* 1 (Del. Supr.) (“A properly entered plea of guilty constitutes a waiver of all errors or defects occurring before the plea.”); *Russell v. State*, 1999 WL 507303, at \* 2 (Del. Supr.) (“By entering into a voluntary and intelligent plea agreement, a defendant waives his constitutional right to a trial and therefore, to attack any alleged defects which preceded the guilty plea.”).

<sup>6</sup> Trans. of January 23, 2008 Nolo Contendere Plea at 3-4.

4. Additionally, and alternatively, to the extent Defendant has raised claims of ineffective assistance of counsel occurring after the entry of his *nolo contendere* plea, those claims fail under the test established by the United States Supreme Court in *Strickland v. Washington*.<sup>7</sup> Under *Strickland*, Defendant bears the burden of proof in showing that counsel's efforts "fell below an objective standard of reasonableness" and that, but for counsel's alleged error there was a reasonable probability that the outcome would have been different.<sup>8</sup> When evaluating counsel's performance, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of professional assistance."<sup>9</sup>

Here, Defendant has failed to allege how counsel's representation fell below an objective standard of reasonableness or establish that the outcome would have been different. Mr. Werb met with Defendant on multiple occasions and met with Defendant's witnesses to discuss possible trial testimony.<sup>10</sup> Although Defendant alleges that counsel did not properly investigate the facts of his case, the record contradicts Defendant's assertions. Additionally, Defendant has failed to conclusively establish that

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<sup>7</sup> 466 U.S. 668 (1984)

<sup>8</sup> *Id.* at 694.

<sup>9</sup> *Id.* at 689.

<sup>10</sup> Aff. of Dade D. Werb, Esquire at 1-2.

he would have rejected the guilty plea if Mr. Werb had done any further investigation.

Defendant's allegations fail to overcome the strong presumption in favor of counsel's rendering effective assistance, and Defendant's motion fails to allege facts in sufficient detail to demonstrate a reasonable probability that counsel's assistance was "ineffective."

5. For the reasons stated, Defendant has waived any claim of ineffective assistance of counsel.<sup>11</sup> As such, Defendant's Motion for Postconviction Relief is **DENIED**.

**IT IS SO ORDERED.**



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Richard R. Cooch, J.

oc: Prothonotary  
cc: Investigative Services  
cc: Dade D. Werb, Esquire

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<sup>11</sup> Although Defendant has raised some arguments concerning ineffective assistance of counsel in his subsequent murder trial, those allegations are not properly before the undersigned judge because the undersigned judge who accepted Defendant's plea did not preside over his murder trial.