SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

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

April 14, 2010

Raymond W. Brown
Sussex Correctional Institution
P. O. Box 500
Georgetown, DE 19947

RE: State v. Raymond Brown
Defendant ID No. 0805020294 (R-1)

Dear Mr. Brown:

On December 18, 2009, you filed a Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). The record was expanded pursuant to Rule 61(g). The Court has reviewed and considered the file, the transcript of your plea, and the Rule 61(g) submissions by your attorney, the prosecutor, your March 9, 2010 response, and your April 1, 2010 response. This is the Court's decision denying your Motion.

THE PLEA

On December 5, 2008, you entered a guilty plea to rape in the fourth degree. You were originally charged with rape in the first degree, but the information filed in Superior Court alleged rape in the second degree. The guilty plea was entered on the date of your final case review.

The transcript evidences that when I began the plea colloquy, you stated you would tell me the truth. Prior to my conversation with you, your attorney reviewed the plea and his explanation of what he reviewed with you.

You advised me it was your personal decision to plead guilty. You also advised that you discussed the State's evidence and allegations with your attorney, as well as what you did or did not do. When I asked if you were guilty, you said "Yes, I am, sir".

You advised you had enough time to discuss the case with your attorney and had no complaints.

We reviewed the waiver of your trial rights and appeal rights. You informed me you understood your rights and knew you were waiving your right to trial and appeal.

You advised that no one on earth was forcing you to plead guilty.

Following the acceptance of the plea, I found the negotiated, recommended sentence to be reasonable. After giving you credit for the time you had served, the Level 5 portion of your sentence was suspended and you received probation.

BACKGROUND AND RULE 61 ALLEGATIONS

Two weeks later, on December 19, 2008, you were found in technical violation of probation, given credit for additional time served, and again you received probation.

On November 3, 2009, you were violated again, and again you received probation because on that same day you were sentenced to five (5) years (minimum-mandatory) for a felony drug offense. You are incarcerated on that charge, not on the rape sentence.

On December 18, 2009, you filed the present Motion alleging as follows.

Ground one: "denial of right to confront witnesses" when the State made threats to the victim's mother to take her child if she did not comply with their requests.

The Court has reviewed the letters you offer. These letters, written by family and the mother of your child, the victim, allege the child vacillated as to what she reported you did to her.

The child's mother reports she reluctantly cooperated with the prosecution because she had been told that despite any doubts she may have had, she would be perceived as a bad mother if she did not support her daughter.

Now that the child's mother has switched camps, you have decided the time is ripe to seek a new trial.

Ground two: "suppression of favorable evidence". You allege the State had a taped interview wherein the child victim was inconsistent as to whether or not criminal conduct had occurred.

Ground three: "Coerced Guilty Plea". The prosecutor coerced the guilty plea when he reported the mother of the victim would testify for the State. You report that you pled guilty because of this, but now you allege the State threatened the child's mother. You further state the child's mother reported recantations by the child, but the State refused to listen to her. You report that with

these "lies", you decided you had to plead guilty.

Pursuant to Rule 61(g), your attorney reported to the Court that he did not coerce or threaten you as to your decision to plead guilty. He states he reviewed the evidence with you. A private polygraph was arranged which resulted in a report of a high degree of deception in regard to your denial of sexual contact with your daughter.

Faced with the State's evidence, the above-mentioned information, and the plea offer to rape in the fourth degree with a probation recommendation, your attorney believed you made a wise decision.

Pursuant to Rule 61(g), the prosecutor reported to the Court the following:

(a) The child's mother never gave any indication she thought the Defendant was not guilty. She wanted him to go to jail for what he had done.

(b) The child's mother was a subpoenaed witness; and had the case gone to trial, her under-oath testimony was subject to cross- examination by the defense.

(c) The prosecutor did not threaten the child's mother, nor does he know of any threats.

(d) The defense had the full Child Advocacy Center ("CAC") interview of the child's statement months prior to the plea. This is the only taped interview. He reports that the child did not indicate "another man did it", but did briefly inform the interviewer of other sexual conduct with a 14-year old boy. Nothing was suppressed or kept from the defense.

(e) That rape in the second degree normally carries a penalty of ten (10) years to life, but the child's age was included as an element of the offense, thereby enhancing the penalty to twenty-five (25) years to life. 11 *Del. C.* §4205A.

(f) When the defense inquired about a potential exculpatory journal, the State located it and provided it to the defense.

(g) To the extent the child's mother is now reporting by letters that the child has recanted, the State argues that recantation in inter-family sexual acts are viewed skeptically. The State reports the difficult circumstances of this child in having an unstable home. The mother's letter evidences the Department of Services for Children, Youth and their Families' custodial and foster care for the victim.

Your reply as to your attorney's report to the Court tracks what your attorney reported. Your attorney did not threaten or coerce you. You and your attorney discussed what your circumstances were if the case went to trial. Your attorney recommended the plea and you decided to take the plea.

You report you did feel threatened into taking the plea by what you were facing and "I knew I did not want life in prison, so I took the plea to keep me out of jail till [sic] I could get more facts about the case." You feel the State lied to your attorney and twisted their facts to make you look guilty.

In response to the State's Rule 61(g) affidavit, you sent a letter which was received on April 1, 2010.

You now distinguish the allegation of threats by the "State" to mean pressure by DSCYF against the child's mother that a good mother should cooperate with the rape investigation. The child's mother had lost custody to DSCYF and was in a cooperating frame of mind to regain custody. Subsequently, she has regained custody of her daughter.

The allegation that the State suppressed exculpatory evidence has fallen by the wayside. You acknowledge the victim reported on the CAC tape about someone else touching her and you were aware of that alleged incident at Burton Village. There is no evidence of any *Brady* violation by the prosecution.

In summary, you argue that the victim's mother was cooperating with the prosecutor just to go along in order to raise her chances of getting her daughter back from the custody of DSCYF.

In response to the State's position that no evidence has been offered concerning your allegation that the victim recanted, you argue for several pages about false allegations, recantation and the "other incident" involving your daughter at Burton Village.

PROCEDURAL BARS

You pled guilty and were sentenced on December 5, 2008. Your Motion for Postconviction Relief was filed on December 18, 2009.

The one-year period in which a postconviction motion may be timely filed does not begin to run until the conviction is final. The Supreme Court has ruled that the one-year begins to run thirty (30) days following sentencing if no appeal is taken. *Jackson v. State*, 654 A.2d 829 (Del. 1995). Your motion is timely because it was filed within one (1) year and thirty (30) days from the date you were sentenced.

MERITS/DISCUSSION

You advised the Court that you were guilty of rape in the fourth degree and that you were not being forced to plead guilty.

The case was set for trial on December 9, 2008. That was the day of reckoning. On December 3, 2008, you had a final case review, which was moved to December 5, 2008, at the

defense request to give you more time to consider the plea negotiations.

You made your decision to plead guilty. You are bound by your answers absent clear and convincing evidence to the contrary. *Somerville v. State*, 703 A.2d 629 (Del. 1997).

You made your decision with knowledge that your young daughter was vacillating in her reports. In your submissions to the Court, you go through what you and your mother knew about "lies" the victim made up about another incident and about you. Your "knowledge" of this information substantially predated your guilty plea. You made your decision knowing the child's mother was cooperating with the State. You and your lawyer knew she did not have custody. Her bias and potential prejudice arising from wanting to regain custody could have been fully explored on cross-examination. While she may report to you now she did so reluctantly and under pressure, there is no evidence the State forced her to lie.

In summary, the child's mother was a subpoenaed witness, available for trial, and under oath, she could have been questioned about all the things of which you complain. The "new" evidence is that she has now told you her cooperation was done reluctantly.

The CAC interview of your daughter was not kept from you. The defense had a copy of it in September. There is nothing to suggest underhanded conduct by the prosecutor. In fact, the prosecutor assisted the defense in locating and turning over a journal you or your lawyer wanted to review for potential exculpatory purposes.

I am satisfied you entered your plea knowingly, voluntarily and intelligently. The coercive circumstances of potentially facing twenty-five (25) years to life at trial was a factor you may have considered, but it is not an illegal coercive factor. It is just one of the facts you weighed in accepting the plea offer extended by the State.

The gist of your Motion is that you now allege you are innocent, contrary to telling me you would be truthful and then telling me you were guilty of raping your daughter.

You go to great lengths to explain the conduct of the victim, but the only thing really "new" in your Motion is that the child's mother reports she now supports you and really did not want to cooperate with the prosecutor. Everything else was known to you when you pled guilty by admission.

Allowing you to plead guilty on the eve of trial, and then withdraw your guilty plea because you were just buying time to fight another day, would turn the criminal justice system upside down. Finality is important. Closure for victims is important.

Finally, an aside as to recantations or reports of recantations. First, your Rule 61 filing makes it clear you knew of this "new" evidence prior to the plea. You reviewed the "lies" the victim communicated to others. You were aware of some and had actually confronted her prior to your

arrest. You had the benefit of knowing and evaluating the State's evidence, including the knowledge of her vacillating reports. Second, recantations by young children under the pressure of family are not unusual. Guilt becomes a heavy burden for a child when an uncle or father has been convicted of a sex offense. Such "recantations" are viewed with great suspicion.

CONCLUSION

Your Motion for Postconviction Relief is denied because you have provided no good and just cause for the Court to ignore your knowing, voluntary and intelligent guilty plea.

IT IS SO ORDERED

Yours very truly,

/s/ T. Henley Graves

T. Henley Graves

THG:baj
cc: Prothonotary
Adam D. Gelof, Esquire
William M. Chasanov, Esquire