SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

November 29, 2010

Willie R. Bryant
SBI No. 00548546
NBCI
14100 McMullen Highway SW
Cumberland, MD 21502

RE: State of Delaware v. Willie R. Bryant
Cr.A.No. 05-05-0828 - Def. ID No. 0403010937
Letter Opinion

Date Submitted: September 7, 2010

Dear Mr. Bryant:

This is my decision on your Motion for Postconviction Relief. You were charged with one count each of Robbery in the First Degree and Kidnaping in the First Degree, two counts of Possession of a Firearm During the Commission of a Felony, and one count of conspiracy in the Second Degree. The charges arose out of your robbery and kidnaping of an employee at the Family Dollar Store in Delmar, Delaware. You pled guilty to one count each of Robbery in the First Degree and Possession of a Firearm During the Commission of a Felony before the Honorable T. Henley Graves. He ordered a presentence investigation. I sentenced you to 50 years at Supervision Level V. You then filed an appeal with the Supreme Court. The Supreme Court affirmed your convictions.[1] You then filed a *pro se* Motion for Postconviction Relief. You allege that (1) your sentence

[1] 901 A.2d 119, 2006 WL 1640177 (Del. June 12, 2006)(TABLE).

was unconstitutional, (2) your attorney was ineffective, and (3) your incarceration violated the Interstate Agreement on Detainers. This is your first Motion for Postconviction Relief and it was filed in a timely manner.

You were represented by Michael R. Abram, Esquire. The State was represented by Deputy Attorney General Peggy J. Marshall, Esquire. Abram and Marshall submitted affidavits in response to your allegations. You asked me to issue a "Writ of Habeas Corpus Ad Testificandum" to obtain the testimony of State of Maryland inmates Donald M. Williams and Mallory A. Peterson, stating that they were witnesses to your plea negotiations in this case. However, you have not identified the information that they would allegedly offer. Given the nature of your allegations and the absence of any specific allegations about what Williams and Peterson would offer, I have concluded that a hearing is not necessary.

I. Unconstitutional Sentence

You allege that your sentence is unconstitutional because (1) the Court did not state the context in which your sentence was supposed to run, and (2) the sentence should have merged under the "required evidence test." The nature and duration of your sentence was made clear to you on the Truth-In-Sentencing Guilty Plea Form and during the plea colloquy. The Truth-In-Sentencing Guilty Plea Form listed the statutory penalties for Robbery in the First Degree and Possession of a Firearm During the Commission of a Felony as ranging from a minimum of five years to a maximum of 25 years. It also indicated that your minimum mandatory penalty was 10 years and that your total maximum penalty was 50 years. Judge Graves and Abram also went over this with you during your plea colloquy. The following is an excerpt of the applicable portions of it:

Mr. Abram: Good morning, Your Honor. I have Willie Bryant. Mr. Bryant has agreed to take a plea to robbery in the first degree and to possession of a firearm during the commission of a felony. Given certain enhancements, Mr. Bryant is facing a minimum mandatory of five years on each. I have gone over the Truth-In-Sentencing Guilty Plea Form with Mr. Bryant and have explained to him the valuable trial rights that he's giving up here today. I've explained to him that you are free to sentence him anywhere from 10 to 50 years. There is no immediate sentencing recommendation for Your Honor. Mr. Bryant understands that.

The Court: Mr. Bryant, you are charged with two serious offenses: One robbery in the first degree, punishable by up to 25 years in jail; the other is the weapons charge, possession of a firearm during the commission of a felony, punishable by up to 25 years in jail. There is a minimum mandatory sentence of ten years. The sentence has to begin with the ten years and can go up to 50 years.[2]

The nature and duration of your potential sentence was more than adequately explained to you. Furthermore, 11 *Del.C.* 3901(d) states that "[n]o sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant."[3] I do not know what you are referring to when you state your sentences must merge under the "required evidence test." However, it is clear that Delaware law prohibits the merging of sentences. Your allegations regarding your sentencing are without merit.

II. Ineffective Assistance of Counsel

You allege that Abram was ineffective because he (1) did not deliver on his promise that you would get a ten-year sentence, and (2) did not file an adequate appeal with the

[2] Tr. at 2-3 (Aug. 3, 2005).

[3] See also 11 *Del.C.* § 1447(A)(e).

Supreme Court. The United States Supreme Court has established the proper inquiry to be made by courts when deciding a motion for postconviction relief.[4] In order to prevail on a claim for ineffective assistance of counsel pursuant to Superior Court Criminal Rule 61, the defendant must show: "(1) counsel's representation fell below an objective standard of reasonableness; and (2) counsel's actions were so prejudicial that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial."[5] Further, a defendant "must make and substantiate concrete allegations of actual prejudice or risk summary dismissal."[6] It is also necessary that the defendant "rebut a 'strong presumption' that trial counsel's representation fell within the 'wide range of reasonable professional assistance,' and this Court must eliminate from its consideration the 'distorting effects of hindsight when viewing that representation.'"[7] There is no procedural bar to claims of ineffective assistance of counsel.[8]

a. Ten-year sentence

You allege that Abram promised you that you would receive the minimum ten-year sentence. Abram denies that he ever made such a promise to you. Moreover, your allegation is contradicted by your plea colloquy with Judge Graves. The transcript of the

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[4] *Strickland v. Washington*, 466 U.S. 668 (1984).

[5] *State v. Thompson*, 2003 WL 21244679 (Del. Super. April 15, 2003), *citing Strickland*, 466 U.S. 668 (1984).

[6] *State v. Coleman*, 2003 WL 22092724 (Del. Super. Feb. 19, 2003).

[7] *Coleman*, 2003 WL 22092724, at *2, *quoting Strickland*, 466 U.S. at 689.

[8] *Coleman*, 2003 WL 22092724, at *1, *citing State v. Johnson*, 1999 WL 743612, at *2 (Del. Super. Aug. 12, 1999).

plea colloquy reflects that you understood that you faced a minimum mandatory term of 10 years and a maximum term of 50 years. The following is an excerpt of the applicable portions of it:

> The Court: Mr. Bryant, you are charged with two serious offenses: One robbery in the first degree, punishable by up to 25 years in jail; the other is the weapons charge, possession of a firearm during the commission of a felony punishable by up to 25 years in jail. There is a minimum mandatory sentence of ten years. The sentence has to begin with the ten years and can go up to 50 years.
>
> The Court: This is Mr. Bryant saying, hey, I did this, I'm responsible, I know Im hoping I'm not going to get hit too hard?
>
> The Defendant: Yes, Sir.
>
> The Court: But you understand it is going to be up to the judge to decide how hard the hit is?
>
> The Defendant: Yes, Sir.
>
> The Court: Has anybody promised you what the sentence would be?
>
> The Defendant: No, Sir.[9]

This allegation is without merit.

b. Appeal

Abram filed an appeal with the Supreme Court.[10] You allege that the appeal was not adequate. However, you do not state what issues Abram should have raised, but did not. This allegation is merely conclusory and, as such, it is without merit.

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[9] Tr. at 9 (Aug. 3, 2005).

[10] 901 A.2d 119, 2006 WL 1640177 (Del. June 12, 2006)(TABLE).

III. Interstate Agreement on Detainers

You allege that the State violated the Interstate Agreement on Detainers because it did not have a final disposition of your case within the required time periods. However, you do not offer any facts to support your allegation. The first time period the State was required to comply with concerns your written notice requesting disposition of the charges against you. You signed a written notice and request for final disposition on April 5, 2005. Under 11 *Del.C.* § 2542(a), the State had 180 days to bring you to trial. You pled guilty on August 3, 2005. The time period between your request for final disposition and your guilty plea was 120 days, which is well within the required time period required by 11 *Del.C.* § 2542(a). The second time period the State had to comply with is governed by 11 *Del.C.* § 2543(c), which states that a "trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State..." You arrived in Delaware on May 6, 2005. You pled guilty on August 3, 2005. The time period between your incarceration in Delaware and the time you pled guilty was 89 days, which is within the required 120 day time period. This allegation is without merit.

CONCLUSION

Willie R. Bryant's Motion for Postconviction Relief is DENIED.

IT IS SO ORDERED.

Very truly yours,

/S/ E. Scott Bradley

cc: Michael R. Abram, Esquire
Peggy J. Marshall, Esquire
Prothonotary