

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
)
 v.) ID. No. 9909023596
)
 COLBERT SHANNONHOUSE,)
)
 Defendant.)

OPINION AND ORDER

**On the Defendant's Motion for
Post-conviction Relief**

Submitted: November 6, 2002

Decided: February 28, 2003

Paul R. Wallace, Esquire, Deputy Attorney General, Department of Justice, 820 North French Street, Wilmington, DE 19801.

Kester I. H. Crosse, Esquire, Assistant Public Defender, Office of the Public Defender, 820 North French Street, Wilmington, DE 19801, Attorney for the Defendant.

Mr. Colbert Shannonhouse, Delaware Correctional Center, 1181 Paddock Road, Smyrna, DE 19977, Defendant.

TOLIVER, JUDGE

Presently before the Court is the motion filed by the Defendant, Colbert Shannonhouse, seeking post-conviction relief pursuant to Superior Court Criminal Rule 61. That which follows is the Court's resolution of the issues so presented.

FACTS AND PROCEDURAL POSTURE

Mr. Shannonhouse was indicted on several offenses, including, *inter alia*, Robbery First Degree (two counts) and Possession of a Firearm During the Commission of a Felony (three counts), on November 8, 1999. At his first case review, the State of Delaware extended a plea bargain to Mr. Shannonhouse. Although Edmund M. Hillis, Esquire was assigned to Mr. Shannonhouse's case, Mr. Hillis was unavailable at that time, and Mr. Shannonhouse was instead represented by Kester I. H. Crosse, Esquire. After reviewing the offer with Mr. Crosse, Mr. Shannonhouse decided to reject the State's plea bargain offer and proceed to trial. A final case review was set for January 10, 2000, at which time the State extended a modified plea bargain. Mr. Hillis, not Mr. Crosse, represented Mr. Shannonhouse at

this meeting. The modified offer was also rejected and the matter was set for trial.

Trial was scheduled for October 17, 2000. Mr. Hillis was again indisposed, so Mr. Crosse represented Mr. Shannonhouse. However, after jury selection, Mr. Shannonhouse indicated that he wished to enter a plea of guilty. The State drafted a new plea agreement which was presented to and executed by the Defendant. At that point, the Court and the Defendant engaged in a colloquy regarding the Defendant's understanding and acceptance of the plea.

During the plea colloquy, the Court asked if Mr. Shannonhouse understood the charges lodged against him, whether he and his attorney had thoroughly discussed the nature and allegations in support of those charges, and whether he was satisfied with his attorney's performance up to that point. Mr. Shannonhouse answered each of these question in the affirmative. When the Court asked Mr. Shannonhouse if he understood what the State's plea offer contained, he expressed some confusion as to the minimum mandatory time implicated by the plea offer, as well as the maximum amount of time that he could potentially be incarcerated.

The Court, Mr. Crosse and the State's attorney then engaged in a fairly lengthy explanation of those factors. At the end of the exchange, Mr. Shannonhouse indicated that he understood the range of penalties contemplated by his acceptance of the State's offer. He proceeded to accept the plea offer and sentencing was scheduled for January 10, 2001. On that date, Mr. Shannonhouse, again represented by Mr. Crosse, was sentenced to 27 years at Level 5 incarceration, followed by a lengthy period of probation at various levels.

On April 26, 2001, Mr. Shannonhouse appealed the sentence he received to the Delaware Supreme Court. That appeal was dismissed on May 25, 2001 as untimely. On July 9, 2001, Mr. Shannonhouse filed a motion for postconviction relief with this Court pursuant to Superior Court Criminal Rule 61 seeking to overturn his conviction. In his petition, Mr. Shannonhouse complains about both the performance of counsel and the conduct of the Court.

Mr. Shannonhouse claims that Mr. Crosse was ineffective as his attorney during the plea bargaining process and plea colloquy. Specifically, he contends that Mr. Crosse failed to explain the nature of the elements of the various charged

offenses. Mr. Shannonhouse also claims that Mr. Crosse had no defense strategy prepared, was unfamiliar with the facts and charges of the case and presented no mitigating factors to decrease the sentence eventually imposed. Finally, Mr. Shannonhouse contends that the trial judge abused his discretion by becoming too involved in the plea negotiations, and requested an evidentiary hearing to address his complaints.

In his response, Mr. Crosse denied each of Mr. Shannonhouse's allegations. He indicates that he met with the Defendant on several occasions for reasonable periods of time, and that he thoroughly explained both the charges leveled against him, as well as the elements of those charges. Though Mr. Crosse admits that he was assigned to defend Mr. Shannonhouse a week before trial, he avers that he was familiar with the facts of his case and was prepared to present a proper defense at trial. Mr. Crosse states that he discussed his preparations with Mr. Shannonhouse prior to his decision to enter the plea and notes Mr. Shannonhouse's declaration at the plea colloquy that he was satisfied with counsel's performance.

As to the sentence imposed, Mr. Crosse contends that he

did present evidence in mitigation of the offenses committed by Mr. Shannonhouse and that it was the Mr. Shannonhouse's criminal record that resulted in an enhanced sentence. Finally, Mr. Crosse pointed out that the trial judge sought only to make clear Mr. Shannonhouse's potential imprisonment and did not inappropriately interfere in the plea negotiations.

The State argued that none of Mr. Shannonhouse's complaints constitute ineffective assistance of counsel, and that both the validity of Mr. Shannonhouse's plea and the reasonableness of the defense provided by Mr. Crosse are beyond question. In addition, it rejects Mr. Shannonhouse's contention that an evidentiary hearing is necessary to address his motion for postconviction relief, arguing that the motion is amenable to summary dismissal. That which follows is the Court's response.

DISCUSSION

Before the Court can consider the merits of a motion for postconviction relief, the movant must first overcome the substantial procedural bars contained in Superior Court

Criminal Rule 61(i).¹ Under Rule 61(i), postconviction claims for relief must be brought within three years of the movant's conviction becoming final.² Further, any ground for relief not asserted in a prior postconviction motion is thereafter barred, unless consideration of the claim is necessary in the interest of justice.³ Similarly, grounds for relief not asserted in the proceedings leading to judgment of conviction are thereafter barred, unless the movant demonstrates: (1) cause for the procedural default, and (2) prejudice from any violation of the movant's rights.⁴ Finally, any ground for relief that was formerly adjudicated in the proceedings leading to judgment of conviction or in a prior postconviction proceeding is thereafter barred from consideration.⁵

Mr. Shannonhouse's conviction became final on January 10, 2000. He filed the instant motion on July 9, 2001, well within the three year time limit imposed by Rule 61(i)(1).

¹ Flamer v. State, 585 A.2d 736, 745 (Del. 1990); Younger v. State, 580 A.2d 552, 554 (Del. 1990); Saunders v. State, 1995 Del. LEXIS 17 at *5.

² Super. Ct. Crim. R. 61(i)(1).

³ Super. Ct. Crim. R. 61(i)(2).

⁴ Super. Ct. Crim. R. 61(i)(3).

⁵ Super. Ct. Crim. R. 61(i)(4).

He has filed no previous motion for similar relief, and his claims are therefore not barred by 61(i)(2). Mr. Shannonhouse's claim that the Court committed plain error and abused its discretion during the plea colloquy and sentencing should have been raised during his aborted attempt to appeal his sentence and are therefore barred by 61(I)(3).⁶ Although the Court may lift this procedural bar to reach a claim in the interest of justice, the petitioner must show both cause for the procedural default and prejudice from any violation of the movant's rights. Mr. Shannonhouse has failed to demonstrate either of these requirements, and his claims relating to the Court's conduct will therefore not be addressed. As a result, only Mr. Shannonhouse's claims of ineffective assistance of counsel remain for the Court's consideration.

Under the standard outlined in Strickland v. Washington⁷, two factors must be established in order to prevail on a claim of ineffective assistance of counsel. First, the Defendant must demonstrate that counsel's representation fell below an objective standard of

⁶ Oliver v. State, 788 A.2d 528 (Del. 2001); Moore v. State, 798 A.2d 1042 (Del. 2002).

⁷ 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984).

reasonableness. Second, he or she must show that counsel's actions were prejudicial to the defense, creating a reasonable probability that, but for counsel's error, the result of the proceeding would have been different.⁸ The Strickland standard is highly demanding and under the first prong of the test, there is a "strong presumption that the representation was professionally reasonable."⁹

The record, Mr. Crosse's response and the State's response show that Mr. Shannonhouse met with Mr. Crosse several times, and that the elements of the offenses with which he was charged were explained to him in detail. Although Mr. Crosse assumed responsibility for Mr. Shannonhouse's case one week before trial, nothing that the Court is able to distill from the record indicates that his conduct leading up to the entry of the plea was professionally unreasonable.

Finally, Mr. Shannonhouse's opinion of why he received an enhanced sentence is misguided. He received the sentence handed down by the Court primarily due to both his prior

⁸ 466 U.S. 668, 694.

⁹ Stone v. State, 690 A.2d 924, 925 (Del. 1996); 585 A.2d 736, 753 (Del. 1990).

criminal record and the violent nature of the crimes.¹⁰ Mr. Crosse introduced mitigating factors such as Mr. Shannonhouse's attendance of college in State of Washington as well as family concerns that might be compromised by a lengthy sentence.¹¹ Mr. Shannonhouse's claim that Mr. Crosse failed to produce mitigating factors, and was therefore responsible for the enhanced sentence, is unfounded and unsupported by the facts in evidence.

In sum, Mr. Shannonhouse has failed to demonstrate that counsel's assistance was unreasonable and has thus failed the first prong of the Strickland test. As a result, it is unnecessary for the Court to reach the second prong of that test. Further, his allegation that the Court abused its discretion or committed plain error during either the plea colloquy or sentencing is not supported by any legal or factual basis.

¹⁰ January 10, 2001 Tr. at p. 23.

¹¹ Id. at pp. 8-15.

CONCLUSION

For the foregoing reasons, Mr. Shannonhouse's motion for postconviction relief must be, and hereby is denied.

IT IS SO ORDERED.

TOLIVER, JUDGE