

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID. No. 1004005380
)	
KENNETH W. COBLE,)	
)	
Defendant.)	
)	

Submitted: April 2, 2014
Decided: April 30, 2014

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE DENIED.**

Martin O’Connor, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Brian J. Chapman, Esquire, 1232 N. King Street, Suite 300, Wilmington, Delaware
19801, Attorney for Defendant Kenneth W. Coble.

PARKER, Commissioner

This 30th day of April, 2014, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND AND PROCEDURAL HISTORY

1. Defendant Kenneth W. Coble was indicted on the charges of Attempted Rape in the First Degree and Assault in the First Degree. On January 24, 2011, Defendant Kenneth W. Coble pled guilty to a single count of Assault in the Second Degree as a lesser included offense of Assault in the First Degree. In exchange for the guilty plea, the State dismissed the remaining charges of the indictment.

2. As part of the plea agreement, Defendant agreed that he would be sentenced, and qualified to be sentenced, as a habitual offender pursuant to 11 *Del. C.* § 4214(a).¹

3. During the plea colloquy, Defendant represented to the court that he agreed to plead guilty to assault in the second degree, that a presentence investigation would be conducted, and that Defendant agreed that he was qualified to be and will agree to be sentenced as a habitual offender.² Defendant further represented to the court that he understood that if he was declared a habitual offender, he could be sentenced to a minimum of eight years of Level V incarceration up to a life sentence.³

4. This action stemmed from Defendant's brutal sexual attack on a 63 year old female victim. Defendant savagely beat his victim's face because she refused to perform a sexual act. He broke bones in her eyebrows, nose, and jaw. When she screamed in

¹ See, January 24, 2011 Plea Agreement.

² January 24, 2011 Plea Transcript, at pg. 7.

³ January 24, 2011 Plea Transcript, at pg. 9.

pain, he told her to “Shut up or I’ll kill you.”⁴ Defendant had a history of prior sexual assaults as well as convictions for burglaries.⁵

5. On July 6, 2011, following a determination that Defendant qualified as a habitual offender under 11 *Del. C.* § 4214(a), the Superior Court sentenced Defendant to life in prison.⁶

6. Defendant filed a direct appeal to the Delaware Supreme Court. On May 30, 2012, the Delaware Supreme Court affirmed the judgment of the Superior Court.⁷

DEFENDANT’S RULE 61 MOTION

7. On December 18, 2012, Defendant filed a *Pro Se* motion for postconviction relief. Thereafter, Defendant was assigned counsel and an Amended Motion for Postconviction Relief was filed on December 19, 2013. In the subject motion, Defendant contends that his trial counsel was ineffective for failing to make the State prove the required number of predicate felonies under the habitual offender statute.

8. Before making a recommendation, the Commissioner enlarged the record by directing Defendant’s trial counsel to submit an Affidavit responding to Defendant’s ineffective assistance of counsel claim. Thereafter, the State filed a response to the motion. Defendant was also given an opportunity to file a reply thereto.⁸

9. At the onset, it is important to set the record straight. Defendant claims that the certified records from his North Carolina conviction were insufficient to establish a conviction in that state because the records did not include a copy of the reverse side of

⁴ See, July 6, 2011 Sentencing Transcript, at pgs. 6-7, 11-13.

⁵ See, July 6, 2011 Sentencing Transcript, at pgs 11-13; State’s Motion to Declare Defendant a Habitual Offender- Superior Court Docket No. 12.

⁶ July 6, 2011 Sentencing Transcript. at pg. 17.

⁷ *Coble v. State*, 2012 WL 1952293 (Del.).

⁸ Super.Ct.Crim.R. 61(g)(1) and (2).

the plea form, which contained his signature. The factual predicate for this claim is incorrect.

10. The State filed a motion to declare Defendant a habitual offender on March 3, 2011. In that motion, the State listed six prior convictions. The State relied on three of the prior convictions as the basis for its habitual offender motion including the North Carolina conviction of Felonious Breaking and Entering for which Defendant was sentenced on March 11, 1987.

11. The State filed the original certified records received from the North Carolina court with the Superior Court and those original records did, in fact, include the reverse sides of all the records. Indeed, the State's original motion filed with court included the reverse side of the "Transcript of Plea" in which Defendant signed the plea and his signature was witnessed by the Assistant Clerk of the North Carolina Superior Court.⁹

12. Defendant, in his Rule 61 motion, contends that "there is nothing on the paperwork to link the Defendant in that paperwork to the Defendant in this case, such as a matching signature on the Defendant signature part of the plea or a date of birth which matches up."¹⁰ Defendant is incorrect in this contention.

13. The certified North Carolina records do, in fact, contain Defendant's signature and his birth date. The "Warrant for Arrest" which was included among the court records provided by the North Carolina court states that Kenneth Wayne Coble's birth date is August 8, 1962, the same birth date as Defendant. The "Transcript of Plea" provides that Kenneth Wayne Coble pled guilty to the felony charge of Breaking and Entering and his

⁹ See, the original Motion to Declare Kenneth Coble a Habitual Offender, Exhibit D- Superior Court Docket No. 12.

¹⁰ See, Defendant's Motion for Postconviction Relief, at pgs. 8-9.- Superior Court Docket No. 45.

signature, which was witnessed by the Assistant Clerk of that court, appears on the plea.¹¹

14. The State has met its burden of proof in establishing that this North Carolina conviction constitutes one of the predicate offenses necessary to establish Defendant's habitual status under 11 *Del. C.* § 4214(a). In order to meet its burden of proof, the State need offer only unambiguous documentary evidence of a prior predicate conviction, not live witnesses, and not a particular or exclusive type of documentary evidence. Once the State has offered evidence of the prior conviction that is regular on its face, the State has met its burden of establishing a *prima facie* case.¹² In this case, the North Carolina records are unambiguous that Defendant, Kenneth Wayne Coble, pled guilty to the felony charge of Breaking and Entering on March 11, 1987. The State has met its burden of establishing a *prima facie* case.

15. Consequently, the factual predicate upon which Defendant's Rule 61 motion is based is incorrect. The North Carolina court records were full and complete and contained the necessary information linking this Defendant to the North Carolina conviction.

16. Moreover, Defendant has already challenged his habitual offender status on direct appeal, and the Delaware Supreme Court has already held that the State sufficiently proved the existence of three felony convictions required to establish Defendant's habitual offender status under 11 *Del. C.* § 4214(a).¹³

¹¹ See, the original Motion to Declare Kenneth Coble a Habitual Offender, Exhibit D- Superior Court Docket No. 12.

¹² *Hall v. State*, 788 A.2d 118, 128 (Del. 2001).

¹³ *Coble v. State*, 2012 WL 1952293, at *1-2 (Del.).

17. Defendant's challenge to his habitual offender status has already been previously adjudicated and is now procedurally barred pursuant to Superior Court Criminal Rule 61 (i)(4). The Delaware Supreme Court has already found Defendant's challenge to his habitual offender status to be without merit.¹⁴

18. The Delaware Supreme Court reasoned that that State had satisfied its burden of proof as to the existence of three prior felony convictions, even if the signature page of the plea agreement from the North Carolina plea was missing (which we now know was not missing and was, in fact, a part of the State's motion papers) because Defendant himself confirmed that he had been convicted in North Carolina of Felonious Breaking and Entering. Defendant also confirmed at sentencing that he was eligible to be sentenced as a habitual offender.¹⁵

19. Defendant's claim is therefore procedurally barred as previously adjudicated.

20. In the subject motion, Defendant appears to be recouching his claim as an ineffective assistance of counsel contention even though it has already been fully and thoroughly considered. The court is not required to re-examine a claim that has already received full and thorough resolution simply because the claim has now been restated and recouched as an ineffective assistance of counsel claim.¹⁶

21. Defendant, in his Rule 61 motion, contends that counsel was ineffective because trial counsel did not make the State prove the existence of the required number of predicate felonies and for allowing Defendant to admit the North Carolina conviction rather than exercising his right to remain silent at the sentencing hearing.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Johnson v. State*, 1992 WL 183069, at *1 (Del.); *Duhadaway v. State*, 877 A.2d 52 (Del. 2005).

22. In order to prevail on an ineffective assistance of counsel claim in the context of a plea challenge, it is not sufficient for the defendant to simply claim that his counsel was deficient. The Defendant must also establish that counsel's actions were so prejudicial that there was a reasonable probability that, but for counsel's deficiencies, the defendant would not have taken a plea but would have insisted on going to trial."¹⁷ Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.¹⁸

23. Defendant's trial counsel, in his response to Defendant's Rule 61 motion, explained that after the State filed its motion to declare Defendant a habitual offender, he filed an answer contesting the motion, as a matter of course.¹⁹ However, it was Defendant's decision, and Defendant's decision alone, to go forward with the sentencing on July 6, 2011 and not contest any of the convictions listed by the State's habitual offender motion.²⁰

24. Defendant's trial counsel further represented that he and Defendant had discussed on numerous occasions Defendant's prior criminal history. Defendant understood at the time of his plea that the State intended to declare him a habitual offender. He understood he was facing a sentence of 8 years to life as a habitual offender. "Mr. Coble was the one who, knowing his prior record, wished to move forward with his sentencing on July 6, 2011 and face a sentencing range of 8 to life. Coble could have decided to fight the

¹⁷ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997); *Premo v. Moore*, 131 S.Ct. 733, 739-744 (2011).

¹⁸ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

¹⁹ Trial Counsel's response to Defendant's Rule 61 Motion dated January 31, 2014.

²⁰ Trial Counsel's response to Defendant's Rule 61 Motion dated January 31, 2014; See, Sentencing Transcript of July 6, 2011, at pgs. 2-6.

convictions laid out in the State's motion, but he chose to go in the courtroom and not oppose the State's motion."²¹

25. Although Rule 61 counsel claims that trial counsel should have advised Coble to remain silent and not incriminate himself at his July 6, 2011 sentencing, Defendant's trial counsel represents that it was Coble that wished to go forward and not contest the State's habitual petition and be sentenced on July 6, 2011. That decision was made by Coble and Coble alone.²²

26. Defendant's trial counsel recognized that Defendant's Rule 61 motion was simply a case of buyer's remorse. The sentencing did not go the Defendant's way. While trial counsel was also disappointed in the sentence imposed by the court, it was not due to trial counsel being ineffective.²³

27. The State's motion to declare Defendant a habitual offender listed six prior convictions, a number of which could have served as a proper basis for habitual offender status. All of the convictions were supported with the proper court records so as to meet the State's burden on proof as to each of underlying convictions. As a practical matter, whether or not Defendant admitted to the underlying convictions, the State had met its *prima facie* showing of the requisite number of predicate felony convictions justifying Defendant's habitual offender status with the court records provided.

28. Defendant's ineffective assistance claim is undermined by the record and fails to satisfy *Strickland*. Defendant fails to state a legitimate ground for relief against his counsel. The conduct of defense counsel does not appear to be deficient in any regard nor has Defendant shown any actual prejudice allegedly as a result thereof.

²¹ Trial Counsel's response to Defendant's Rule 61 Motion dated January 31, 2014.

²² Trial Counsel's response to Defendant's Rule 61 Motion dated January 31, 2014.

²³ Trial Counsel's response to Defendant's Rule 61 Motion dated January 31, 2014.

29. Defendant's request for an evidentiary hearing is denied. The submissions of the parties and the evidentiary record were carefully, fully and thoroughly considered. Defendant's allegations were either reasonably discounted as not supported by the record, persuasively rebutted by defense counsel's Affidavit, or not material to a determination of Defendant's claim.

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied.

IT IS SO RECOMMENDED.

Commissioner Lynne M. Parker

oc: Prothonotary
cc: Dean C. DelCollo, Esquire
Mr. Kenneth Coble