

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)
)
 v.) I.D. # 1406009553
)
 MAURICE CLEMENTS,)
)
 Defendant.)

Submitted: June 23, 2016
Decided: September 30, 2016

Upon Defendant’s Motion for Post-Conviction Relief: DENIED

This 30th day of September, 2016, upon consideration of Defendant’s Motion for Post-Conviction Relief (the “Motion”) under Superior Court Criminal Rule 61 (“Rule 61”), and the record in this case, it appears to the Court that:

FACTUAL AND PROCEDURAL BACKGROUND

1. On January 12, 2015, Maurice Clements pleaded guilty¹ to one count of possession of a firearm by a person prohibited (“PFBPP”), one count of drug dealing – tier 2, and one count of conspiracy second degree. Clements was represented throughout pre-trial proceedings by Darryl Rago, Esquire (“Trial Counsel”). Trial Counsel also represented Clements during the plea negotiations and at sentencing.

¹ In his Motion, Clements indicated he pleaded “nolo contendere.” The forms Clements signed in connection with his plea, as well as the transcript of the plea hearing, indicate he pleaded guilty. See D.I. 7; *State v. Clements*, I.D. No. 1406009553 (Del. Super. Jan. 12, 2015) (PLEA TRANSCRIPT) (hereinafter “Tr.”) at 1, 5, 6.

2. Before accepting Clements' plea, the presiding judge reviewed the plea paperwork and engaged in a detailed colloquy with Clements regarding his decision to plead guilty. During the colloquy, the Court first reviewed the charges to which Clements was pleading guilty. The Court read each relevant charge in the indictment and Clements admitted on the record that he had committed each such offense.² Clements, both at the hearing and on the Truth-in-Sentencing Guilty Plea form, denied that anyone had forced him to enter into the plea.³ Clements acknowledged that the State intended to file a motion to declare him a habitual offender under the habitual offender statute then in effect, and acknowledged that, as a result of his status as a habitual offender, he would face a sentence of up to life in prison for the PFBPP charge, plus an additional ten years, total, for the drug dealing and conspiracy charges.⁴ The Court also asked Clements whether he was satisfied with Trial Counsel's work.⁵ Clements indicated, as he had on the Truth-in-Sentencing form, that he was satisfied with Trial Counsel's representation and had no problems with him.⁶

3. At the conclusion of that colloquy, the judge accepted Clements' plea and found it was knowing, intelligent, and voluntary.⁷ Before the hearing

² *Id.* at 4-6.

³ *Id.* at 6-7; D.I. 7.

⁴ Tr. at 8-9; 11 *Del. C.* § 4214(a).

⁵ Tr. at 11.

⁶ *Id.*

⁷ *Id.* at 12.

concluded, the Court, Trial Counsel, and Clements discussed that, had he gone to trial and been convicted, Clements would have faced a 25-year minimum mandatory sentence for possession of a firearm during the commission of a felony, which was one of the charges the State dismissed when Clements pleaded guilty. The Court confirmed with Clements that he pleaded guilty, at least in part, to avoid the possibility of facing a 25-year minimum mandatory sentence.⁸

4. Before sentencing, Clements attempted to file a *pro se* motion to withdraw his guilty plea. The Court denied that motion. On the day of sentencing, the Court granted the State's motion to declare Clements a habitual offender.⁹ On April 17, 2015, Clements was sentenced to a total of nine years of unsuspended Level V time, consisting of five years at Level V for PFBPP, eight years at Level V for drug dealing, suspended after four years for decreasing levels of partial incarceration and probation, and two years at Level V for conspiracy, suspended for a period of Level III probation.¹⁰

5. Clements did not appeal the denial of his motion to withdraw his guilty plea, nor did he appeal his sentence.¹¹ Clements filed a timely motion for

⁸ *Id.* at 12-13.

⁹ D.I. 14.

¹⁰ D.I. 15. Clements' sentence was effective June 12, 2015 because, at the time of sentencing, he was serving another sentence.

¹¹ Clements' Motion indicates he filed an appeal on August 28, 2015. No such appeal appears on the docket. That appeal would have been untimely, unless it was an appeal from the sentencing judge's denial of Clements' motion for modification of sentence under Superior Court Criminal Rule 35.

modification of sentence, which the sentencing judge denied on August 24, 2015.¹² Clements filed this Motion on March 21, 2016.

6. In his current Motion, Clements argues he is entitled to post-conviction relief because he received ineffective assistance from Trial Counsel. By order dated March 21, 2016, this Court ordered Trial Counsel to respond by affidavit to Clements' claims. Trial Counsel filed his affidavit on June 23, 2016.

ANALYSIS

A. Procedural bars to Clements' claims

7. Before addressing the merits of any claim for post-conviction relief, this Court first must determine whether the motion procedurally is barred under Rule 61.¹³ A motion for post-conviction relief may be barred for timeliness and repetition, among other things. A motion filed under Rule 61 is untimely if it is filed more than one year after a final judgment of conviction.¹⁴ A defendant also is barred from filing successive motions for post-conviction relief.¹⁵ The rule further prohibits motions based on any ground for relief that was not asserted in the proceedings leading up to the judgment of conviction, unless the movant demonstrates "cause for relief from the procedural default" and "prejudice from

¹² D.I. 17.

¹³ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹⁴ Super. Ct. Crim. R. 61(i)(1).

¹⁵ *Id.* 61(i)(2); *see id.* 61(d)(2)(i)-(ii) (regarding the pleading requirements for successive motions).

violation of the movant's rights."¹⁶ Finally, the Rule bars consideration of any ground for relief that previously was adjudicated in the case.¹⁷

8. Notwithstanding the aforementioned procedural bars, this Court may consider a motion that otherwise is barred if the motion is based upon claims that the Court lacked jurisdiction or the motion satisfies the pleading requirements set forth in Rule 61(d)(2).¹⁸ Rule 61(d)(2) requires that the movant plead with particularity that (i) new evidence exists that creates a strong inference that the movant actually is innocent in fact of the acts underlying the charges of which he was convicted, or (ii) a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant's case and renders the conviction or death sentence invalid.

9. Clements' Motion was filed on March 21, 2016, less than a year after his sentencing date, and it therefore is timely. The Motion alleges ineffective assistance of counsel, which could not be raised at any earlier stage in the proceedings.¹⁹ This Court therefore may consider the merits of Clements' Motion.

¹⁶ *Id.* 61(i)(3).

¹⁷ *Id.* 61(i)(4).

¹⁸ *Id.* 61(i)(5).

¹⁹ *Whittle v. State*, 138 A.3d 1149 (Del 2016); *State v. Evan-Mayes*, 2016 WL 4502303, at *2 (Del. Super. Aug. 25, 2016).

B. Clements' claims of ineffective assistance of counsel

10. Clements raises four bases that he argues support his contention that Trial Counsel was ineffective: Trial Counsel (1) “never challenged evidence” and had Clements “waive [a] suppression hearing;” (2) “force[d]” Clements to plead guilty; (3) failed to “capitalize on [Clements’] co-defendant’s confession”; and (4) failed to argue that Clements was “entrapped” by the police in the drug buy leading to his arrest.

11. To prevail on a post-conviction claim for ineffective assistance of counsel in the context of a guilty plea, a defendant must establish that (i) counsel’s representation fell below an objective standard of reasonableness, and (ii) but for counsel’s unprofessional errors, there is a reasonable possibility the defendant would not have pleaded guilty and instead would have insisted on going to trial.²⁰ There is a strong presumption that counsel’s representation was reasonable.²¹ Accordingly, a defendant must make specific allegations of actual prejudice and substantiate them; mere allegations or conclusory statements will not suffice.²²

12. Clements’ first contention is that Trial Counsel never challenged the evidence and forced Clements to waive a suppression hearing. Clements urges that he never had possession of, nor knew about, any of the drugs or the firearm found

²⁰ *Albury v. State*, 551 A.2d 53, 59 (Del. 1988).

²¹ *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

²² *Id.*; *Monroe v. State*, 2015 WL 1407856, at *5 (Del. Mar. 25, 2015).

when the police searched the residence. Clements' Motion on this point does not satisfy the first element necessary to show ineffective assistance of counsel. Clements does not articulate on what basis Trial Counsel would have moved to suppress evidence.²³ The evidence was obtained through a search of a residence where Clements was present. In his affidavit, Trial Counsel indicates he "reviewed the basis of the warrant as well as the execution of the warrant and felt that there was no legitimate basis for a motion to suppress the evidence."²⁴ In addition, this claim is contradicted by Clements' statements in both the Truth-in-Sentencing Guilty Plea form and the guilty plea colloquy that he was satisfied with Trial Counsel's representation. Absent clear and convincing evidence that a defendant did not understand the plea agreement, was forced to accept the plea, or was not satisfied with counsel's representation, a defendant is bound by the statements he gives during the plea colloquy.²⁵ Clements has not met this heightened standard.

13. Clements next argues that he was "forced" to take a plea because Trial Counsel incorrectly advised him that he would "get life at trial" and would be sentenced under the habitual offender statute. Again, Clements' Motion fails to meet the first element of the ineffective assistance standard and it directly contradicts his statements in the Truth-In-Sentencing form and during the plea

²³ See, e.g. *Dawson v. State*, 673 A.2d 1186, 1196 (Del. 1996) (conclusory and unsupported assertions of ineffective assistance fail to establish that counsel acted unreasonably or that the defendant was prejudiced).

²⁴ D.I. 22 at ¶ 5.

²⁵ *Somerville v. State*, 703 A.2d 629, 632 (Del. 2008).

colloquy. To the extent Clements is arguing that Trial Counsel advised that he met the statutory requirements for classification as a habitual offender and, as such, could face a life sentence if convicted, Trial Counsel correctly advised Clements. In fact, Clements faced a possible life sentence by pleading guilty to PFBPP. To the extent Clements is arguing that Trial Counsel told him he would face a mandatory life sentence if he did not accept the plea, Clements swore to the contrary in both the Truth-in-Sentencing form and during the colloquy.²⁶ Clements indicated on multiple occasions he was not being forced to enter into the plea. Clements has not provided clear and convincing evidence to the contrary.

14. Clements' third argument is that Trial Counsel was ineffective because he did not "capitalize" on Clements' co-defendant's confession that the drugs and firearm belonged to the co-defendant and that Clements had no knowledge of, or involvement with, the drugs or the weapon. Clements does not explain how Trial Counsel could have utilized Clements' co-defendant's statement before trial. Although the statement could have been used at trial, Clements waived his right to a trial by entering the plea. Trial Counsel's affidavit indicates he used the statement as leverage during plea negotiations with the State, but that Trial Counsel could not otherwise use the statement before trial.²⁷ Clements'

²⁶ Clements indicated that no one had forced him or threatened him to enter the plea and that no one had promised him what sentence he would receive.

²⁷ D.I. 22 at ¶ 8.

Motion fails to establish that Trial Counsel's representation on this point fell below an objective standard of reasonableness.

15. Finally, Clements contends Trial Counsel failed to argue "entrapment by [the] New Castle [police department]." Clements' Motion does not explain how he believes entrapment would apply in this case. Trial Counsel's affidavit indicates that the discovery in the case showed that police officers "observed Maurice Clements sell what appeared to be heroin to a confidential informant."²⁸ Clements' Motion fails to provide a specific or substantiated basis from which to conclude that Trial Counsel's representation was not reasonable under the circumstances. Moreover, even if Trial Counsel's failure to argue entrapment was error, Clements has not shown that, but for that alleged error, he would not have pleaded guilty.

16. In sum, the plea Trial Counsel negotiated for Clements avoided a 25-year minimum mandatory sentence that Clements would have faced had he been convicted at trial for possessing a firearm during the commission of a felony. Clements acknowledged that avoiding the minimum mandatory sentence was a factor in his decision to plead guilty. Clements' representations in the Truth-in-Sentencing form and during the plea colloquy specifically denied all the arguments he now seeks to raise. He has not presented any evidence, let alone clear and

²⁸ *Id.* at ¶ 6.

convincing evidence, that he (1) did not understand the plea agreement, (2) was forced to accept the plea, or (3) was not satisfied with Trial Counsel's representation. For all the foregoing reasons, Clements' Motion for Post-Conviction Relief is **DENIED**.


Abigail M. LeGrow, Judge

Original to Prothonotary

cc: James K. McCloskey, Deputy Attorney General
Darryl J. Rago, Esquire
Maurice Clements (SBI No. 00506007)