

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
) Criminal ID No. 1503001415
 Plaintiff,)
)
 V.)
)
 MATTHEW QUESENBERRY,)
)
 Defendant.)
)

Submitted: September 12, 2016

Decided: October 14, 2016

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF SHOULD
BE SUMMARILY DISMISSED**

Christina M. Kontis, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Matthew Quesenberry, James T. Vaughn Correctional Center, Wilmington,
Delaware, *pro se*.

MAYER, Commissioner

This 14th day of October, 2016, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND, FACTS AND PROCEDURAL HISTORY

1. On October 5, 2015, Defendant, Matthew Quesenberry, pled guilty to the charges of Possession of a Firearm by a Person Prohibited and Reckless Driving Alcohol related. Defendant moved for immediate sentencing and on that same date, the Court imposed the State's recommended sentence. The charges stem from an incident that occurred when Defendant left a parking lot without paying, was stopped by police, and smelled of alcohol. Defendant fled but was apprehended. Upon inventorying the car, the police found a 9 mm handgun.

2. Defendant filed a Motion for Postconviction Relief on September 12, 2016. Defendant's motion raises two arguments: (i) "Illegal search and seizure...Car was searched without a search warrant while on private property"; and (ii) "Ineffective assistance of counsel...My lawyer did not advise me properly, in critical aspects of my case that could of drastically changed the outcome." No further facts or legal arguments were presented in the motion.

ANALYSIS OF DEFENDANT'S RULE 61 MOTION

3. The Court must first determine whether there are any procedural bars to the motion before considering the merits.¹ This is Defendant's first motion for

¹ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990); *Paul v. State*, 2011 WL 3585623, at *1 (Del. Aug. 15, 2011) ("Delaware law provides that the Superior Court must first consider whether the

postconviction relief and it was timely filed pursuant to Superior Court Criminal Rule 61. However, pursuant to Superior Court Criminal Rule 61(d)(5) the motion may be summarily dismissed because it plainly appears from the record in the case that the movant is not entitled to relief.

4. Defendant did not raise the claim of an “illegal search and seizure” in the proceedings leading up to the plea nor did he raise this issue on appeal. Further, the motion provides little to no explanation as to the factual and legal basis for the argument presented. Defendant’s motion is thus procedurally barred under Superior Court Criminal Rule 61(i)(3), for Defendant’s failure to raise this ground for relief in the proceedings leading to the judgment of conviction. Defendant has not shown cause for relief from the procedural default nor prejudice from a violation of his rights. In the present case, Defendant was afforded an opportunity to proceed to trial but accepted a plea agreement. Indeed, the Court conducted a thorough plea colloquy into the Defendant’s understanding of the Plea Agreement, Truth-in-Sentencing form and the rights he was surrendering.² Defendant acknowledged that by pleading guilty he was waiving the constitutional rights listed on the Truth-in-Sentencing form. Defendant’s voluntary guilty plea waived his right to challenge any alleged errors or defects occurring prior to the entry of

defendant has satisfied the procedural requirements of Rule 61 before considering the merits of his postconviction motion.”)

² October 5, 2015 Transcript of Guilty Plea and Sentencing (hereinafter “Tr. at ____”).

his plea.³ Defendant is bound by his answers in court and waived his right to contest the State's evidence.⁴

5. Although Defendant's first claim is procedurally barred, Defendant's second claim of ineffective assistance of counsel is not subject to the same bar and is properly asserted by way of a Rule 61 motion.⁵ In order to prevail on an ineffective assistance of counsel claim, a defendant must show that his counsel's representation fell below an objective standard of reasonableness and the deficiencies in counsel's representation caused the defendant actual prejudice.⁶ When a defendant has plead guilty, he must show that counsel's actions were so prejudicial that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial.⁷ Great weight and deference are given to tactical decisions by the trial attorney and counsel cannot be deemed ineffective for failing to pursue motions that lack merit.⁸ Defendant must overcome a strong presumption that counsel's conduct was

³ *Allen v. State*, 2008 WL 187960, at *1 (Del. Jan. 14, 2008), citing *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).

⁴ *State v. Kashner*, 2016 WL 354999 (Del. Super., Jan. 27, 2016).

⁵ *State v. Dickinson*, 2012 WL 3573943, at *5 (Del. Super., Aug. 17, 2012).

⁶ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Hitchens v. State*, 757 A.2d 1278 (Del. 2000).

⁷ *State v. Hess*, 2014 WL 6677714, at * 6 (Del. Super. Nov. 20, 2014) (citations omitted).

⁸ *State v. Miller*, 2013 WL 871320, at *4 (Del. Super. Feb. 26, 2013).

reasonably professional under the circumstances.⁹ Mere allegations of ineffectiveness will not suffice, rather, a defendant must make and substantiate concrete allegations of actual prejudice.¹⁰ “The ‘failure to state with particularity the nature of the prejudice experienced is fatal to a claim of ineffective assistance of counsel.’”¹¹

6. Defendant’s argument of ineffective assistance of counsel is wholly conclusory and is unsupported by specific facts, details or argument. Defendant provides no explanation as to how counsel’s actions were allegedly substandard or unreasonable. Significantly, Defendant fails to explain how he was prejudiced by any alleged deficiencies. Defendant’s failure to substantiate the claim and state with particularity the nature of the prejudice experienced is fatal to his claim. Thus, Defendant has not rebutted the presumption that counsel’s conduct was reasonably professional.

For all the foregoing reasons, Defendant’s Motion for Postconviction Relief should be summarily dismissed.

IT IS SO RECOMMENDED.

Commissioner Katharine L. Mayer

⁹ *State v. Wright*, 653 A.2d 288, 293-94 (Del. Super. 1994) (citations omitted).

¹⁰ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

¹¹ *Hoskins v. State*, 102 A.3d 724, 730 (Del. 2014), quoting *Dawson v. State*, 673 A.2d 1186, 1196 (Del. 1996).