

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
)
 v.) I.D. No. 0004015109
)
 ROBERT SCOTT,)
)
 Defendant.)
)

Submitted: December 1, 2002
Decided: January 2, 2003

O R D E R

**UPON DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF.
SUMMARILY DISMISSED.**

This 2nd day of January, 2003, upon consideration of the Defendant's Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 and the record in this case, it appears that:

(1) On April 2, 2002, Defendant, Robert L. Scott, pleaded guilty to Aggravated Menacing. On June 14, 2002, the Court sentenced Defendant to two years Level 5 incarceration, suspended after serving fifteen months for decreasing levels of probation.

(2) Defendant has now filed the above-captioned Motion for Postconviction Relief. In support of his motion, Defendant lists as grounds for relief claims of double jeopardy, coerced guilty plea, and unfulfilled plea agreement. This is Defendant's first motion for postconviction relief and the Court has determined that no procedural bars apply. Therefore, the Court may consider the merits of Defendant's motion.

(3) Defendant's initial ground for relief, double jeopardy, alleges that the Court dismissed all pending charges against him on November 20, 2001 during a call of the criminal trial calendar. Although Defendant does not elaborate further, the Court interprets his claim to argue that his guilty plea to charges that were previously dismissed subjected him to double jeopardy.

(4) Review of the record in Defendant's case shows that this Court did indeed dismiss Defendant's charges. However, the record also shows that the Court vacated the order dismissing Defendant's case on November 27, 2001 and directed that the case be set for trial.¹ During a conference with the State and Defendant's counsel, the Court explained that it had previously granted defense counsel's oral motion to dismiss Defendant's charges because the State represented that the victim had not appeared for trial and that it was therefore not ready to proceed with a trial. After the case was dismissed, it was determined that counsel was in error and that the victim was present in the courtroom at the time. The

¹ See transcript of office conference before J. Gebelein, Nov. 26, 2001, p. 5-6.

Court stated that, but for the misunderstanding that the victim was not present for trial, the case against Defendant would not have been dismissed.²

(6) The Court finds that, by dismissing Defendant's charges and then vacating that dismissal, which resulted ultimately in Defendant's guilty plea, does not constitute double jeopardy. Both the United States and Delaware constitutions provide that no person shall be twice put "in jeopardy of life or limb" for the same offense.³ The effect of the double jeopardy clause is to afford criminal defendants against a second prosecution for the same offense after acquittal or conviction and to protect against multiple punishments for the same offense.⁴

(7) In a criminal proceeding, jeopardy attaches when a jury has been impaneled and sworn or when the first witness has been sworn in a non-jury trial.⁵ Where a defendant has been convicted based on a guilty plea, double jeopardy will preclude a subsequent conviction for the same offense.⁶ In the instant case, jeopardy did not attach in the proceedings against Defendant until he entered his guilty plea. Therefore, when the Court dismissed his charges a week earlier, jeopardy had not attached and reinstatement of those charges did not violate the prohibitions against double jeopardy.

² *Id.* at 5.

³ U.S. Const., Amend. V; Del. Const., art. I, § 8.

⁴ *Tarr v. State*, 486 A.2d 672, 674 (Del. 1984)(Citations omitted).

⁵ *Id.* (Citations omitted).

⁶ *Id.*

(8) In addition, the Court also notes that Superior Court Criminal Rule 48(b) provides, “if there is unnecessary delay in bring a defendant to trial, the court may dismiss the indictment, information or complaint.” In the instant case, the Court based its dismissal on the mistaken belief that the victim had not appeared and that the State was unable to proceed in the victim’s absence. But for that mistake, the Court would not have exercised its discretion to dismiss Defendant’s charges. The mistake was quickly realized by the defense and the dismissal vacated seven days later. As a result, the Court cannot find that Defendant suffered any prejudice as a result of the erroneous dismissal of his charges. Therefore, for the foregoing reasons, the Court finds that Defendant’s first ground for relief is without merit.

(9) Defendant’s second ground for relief, “coerced guilty plea,” alleges that his defense counsel, “knowing that the court dismissed all charge(s) . . . told me I could not win at trial and to plea guilty so that I would get probation.” As detailed above, on the date Defendant entered his plea, the Court had vacated the order dismissing the charges against him so that his attorney did not advise him to enter a plea to charges that were no longer valid.

(10) Also, on his guilty plea form, Defendant indicated that he freely and voluntarily decided to plead guilty to the charges listed in the plea agreement, that no one had promised him anything not stated in the plea agreement, and that no one, including his attorney, threatened or forced him to enter the plea. Defendant averred that he was satisfied

with his lawyer's representation of him and that his lawyer had fully advised him of his rights and of the guilty plea. Review of the guilty plea colloquy transcript also supports the Court's finding that Defendant knowingly and voluntarily entered into his guilty plea. Therefore, the Court finds that Defendant's second ground for relief also is without merit.

(11) Defendant's final ground for relief, "unfulfilled plea agreement," claims that his attorney and the State "agreed that Defendant would plea guilty and be placed on probation. Also, Defendant [sic] plea was signed knowing probation would be the sentence." Despite Defendant's claim that he was promised a sentence of probation, review of the guilty plea forms and the plea colloquy transcript do not show any evidence of a promised probationary sentence. Defendant's signed plea agreement indicates only that a presentence investigation was recommended by the State. No other sentence recommendation is specified. Defendant indicated on the guilty plea form and during the plea colloquy that no one had promised him what his sentence would be. As a result, the Court finds that Defendant understood the terms of his guilty plea, including the sentencing possibilities. The Court finds that Defendant's final ground for relief also is without merit.

Therefore, because the Court finds that it is plain from the Motion for Postconviction Relief and the record in this case that Defendant is not entitled to relief, the motion is hereby **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Carl Goldstein, Judge

oc: Prothonotary
cc: Robert Scott