

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)	ID. No. 1301012846
)	In and for Kent County
v.)	
)	RK13-02-0396-01
)	Rape 1 st (F)
JONATHAN KARASEVICH)	
Defendant.)	
)	

COMMISSIONER'S REPORT AND RECOMMENDATION

**Upon Defendant's Motion for Postconviction Relief
Pursuant to Superior Court Criminal Rule 61**

Susan G. Schmidhauser, Esquire, Deputy Attorney General, Department of Justice,
for the State of Delaware.

Jonathan Karasevich, *Pro se.*

FREUD, Commissioner
August 17, 2017

The defendant, Jonathan Karasevich (“Karasevich”), pled guilty on June 26, 2013 to Rape in the First Degree, 11 *Del. C.* § 773. He also faced fifteen additional counts of Rape in the First Degree, one count of Continuous Sexual Abuse of a Child, one count of Sexual Solicitation of a Child and one count of Endangering the Welfare of a Child. *Nolle prosequis* were entered by the State on the additional charges in

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exchange for Karasevich's plea. As part of the Plea Agreement the parties agreed to recommend a sentence of fifty years at Level V suspended after serving fifteen years minimum mandatory for varying levels of probation. The Court agreed with the parties recommendation and sentenced Karasevich accordingly. Had he gone to trial and been found guilty of all charges he faced 255 minimum mandatory and the possibility of life in prison.

Karasevich filed a Motion for Sentence Reduction and Modification on September 23, 2013 which was denied due to the defendant receiving the mandatory minimum. Karasevich then filed the Motion for Postconviction Relief *pro se* pursuant to Superior Court Criminal Rule 61. The Court appointed counsel to represent Karasevich in his motion. Appointed Counsel subsequently filed a motion to withdraw with supporting memorandum. In the motion to withdraw, Appointed Counsel set forth that he conducted a conscientious review of the record and concluded that no meritorious issues existed. Appointed counsel was granted permission to withdraw.

FACTS

The charges stemmed from a call from Division of Family Services (DFS) to Harrington Police Department in reference to a sexual abuse complaint. On January 9, 2013, DFS advised Lieutenant Earl Brode that the alleged victim (M.W.)¹ disclosed during a counseling session that about two years prior, she was sexually assaulted by

¹ Minor victim's initials used herein for confidentiality.

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her uncle, Karasevich. Lt. Brode scheduled an interview with the Children's Advocacy Center (CAC) to speak with the alleged victim. M.W. stated that she was sexually abused by her uncle starting at the age of 6, August 2008, until age 8, December 2009. She described the abuse as touching, digital penetration and tongue penetration, all of which occurred numerous times on a weekly basis. The police swore out an arrest warrant on January 17, 2013, and after an extradition from Montana, Karasevich was arrested on February 2, 2013.

KARASEVICH'S CONTENTIONS

In his motion, Karasevich raises the following grounds for relief:

- Ground one: Denial of right to Effective assistance of counsel. Counsel refused to go to trial stating that 'she did not want to torture the victim any further.' Defendant was adamant about his innocence and going to trial. Defendant had multiple alibies (sic) as to his whereabouts in the Military pertaining to his charges.
- Ground two: Failure to investigate claims made by the defendant related to his case. Alleged victims (sic) medical exam results were returned after the defendant was sentenced. Results was negative to the claim. Defendant also had information

as to the substantiated abuse of the alleged victims (sic) Mother, his (Adopted sister) by her Uncle but was continuously shut down by his attorney.

Ground three: Induced Plea agreement based on coercion or threats. Defendant's counsel made the statement 'I do not want to torture the victim any further by going to trial.' Reference to alleged victim as a 'victim' is an insight (sic) to then counsels mind frame, where only purely circumstantial evidence existed amid inconsistent times/ frames.

Ground four: [Defendant mistakenly listed this as ground "five."] Defendant's counsel promised him a plea he did not receive. Counsel told the defendant that by accepting this plea he would only have to be incarcerated for 8 years on the 15 years his time was suspended for. This was assuming that he would receive 10 days a month of good time credit from the DOC. This credit did not even exist at the time of plea negotiations and acceptance. On 4-2-14 according to DOC

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Counselor Ms. Chandler it is not even implemented at this time. Defendant was promised something he would not benefit from by his then counsel depriving him of his right to make other decisions.

Ground five: [Defendant mistakenly listed this as ground "Six."] Defendant was on 150 mg of zoloft during preliminary proceedings and up to and through plea negotiations. The defendant was being treated by the DOC dept of Mental Health and was taking a dose of 150 mg zoloft to combat depression and other Mental Health issues. Defendant says he now realizes he was not as cognigent (sic) as his is now, having never been on any medications like this before. DOC Increased this to 200 mg eventually. His then counsel never took any of his mental health conditions at the time into consideration and the defendant should have be (sic) further evaluated before any final proceedings.

The grounds listed above represent all of Karasevich's claims. He did not file

a separate memorandum.

DISCUSSION

Under Delaware law, this Court must first determine whether Karasevich has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of his postconviction relief claim.² This is Karasevich's first motion for postconviction relief, and it was filed within one year of his conviction becoming final. Therefore, the requirements of Rule 61(i)(1) - requiring filing within one year and (2) - requiring that all grounds for relief be presented in initial Rule 61 motion, are met. None of Karasevich's claims were raised at the plea, sentencing, or on direct appeal. Therefore, they are barred by Rule 61(i)(3), absent a demonstration of cause for the default and prejudice. To some extent each of Karasevich's claims are based on ineffective assistance of counsel; therefore, he has alleged cause for his failure to have raised them earlier.

At this point, Rule 61(i)(3) does not bar relief as to Karasevich's grounds for relief, provided he demonstrates that his counsel was ineffective and that he was prejudiced by counsel's actions. To prevail on his claim of ineffective assistance of counsel, Karasevich must meet the two-prong test of *Strickland v. Washington*.³ In the context of a guilty plea challenge, *Strickland* requires a defendant show: (1) that counsel's representation fell below an objective standard of reasonableness; and (2)

² *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

³ 466 U.S. 668 (1984).

that counsel's actions were prejudicial to him in that there is a reasonable probability that, but for counsel's error, he would not have pled guilty and would have insisted on going to trial and that the result of a trial would have been his acquittal.⁴ The failure to establish that a defendant would not have pled guilty and would have proceeded to trial is sufficient cause for denial of relief.⁵ In addition, Delaware courts have consistently held that in setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.⁶ When examining the representation of counsel pursuant to the first prong of the *Strickland* test, there is a strong presumption that counsel's conduct was professionally reasonable.⁷ This standard is highly demanding.⁸ *Strickland* mandates that, when viewing counsel's representation, this Court must endeavor to “eliminate the distorting effects of hindsight.”⁹

Following a complete review of the record in this matter, it is abundantly clear

⁴ *Id.* at 687.

⁵ *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997)(citing *Albury v. State*, 551 A.2d 53, 60 (Del. 1988))(citations omitted).

⁶ See e.g., *Outten v. State*, 720 A.2d 547, 557 (Del. 1998) (citing *Boughner v. State*, 1995 WL 466465 at *1 (Del. Supr.)).

⁷ *Albury*, 551 A.2d at 59 (citing *Strickland*, 466 U.S. at 689).

⁸ *Flamer v. State*, 585 A.2d 736, 754 (Del. 1990)(quoting *Kimmelman v. Morrison*, 477 U.S. 365, 383 (1986)).

⁹ *Strickland*, 466 U.S. at 689.

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that Karasevich has failed to allege any facts sufficient to substantiate his claim that his attorney was ineffective. I find trial counsel's affidavit and Appointed Counsel's motion to withdraw, in conjunction with the record, more credible that Karasevich's self-serving claims that his counsel's representation was ineffective. Karasevich's counsel clearly denies the allegations. Furthermore, Appointed Counsel thoroughly reviewed the record in this case and concluded that none of Karasevich's claims were meritorious and that no other meritorious claims could be found.

As noted, Karasevich was facing the possibility of 255 years minimum mandatory up to life in prison had he been convicted, and the sentence and plea were reasonable under all the circumstances. Prior to the entry of the plea, Karasevich and his attorney discussed the case. The plea bargain was clearly advantageous to Karasevich. Counsel's representation was certainly well within the range required by *Strickland*. Additionally, when Karasevich entered his guilty plea, he stated he was satisfied with defense counsel's performance. He is bound by his statement unless he presents clear and convincing evidence to the contrary.¹⁰ Consequently, Karasevich has failed to establish that his counsel's representation was ineffective under the *Strickland* test.

Even assuming, *arguendo*, that counsel's representation of Karasevich was somehow deficient, Karasevich must satisfy the second prong of the *Strickland* test, prejudice. In setting forth a claim of ineffective assistance of counsel, a defendant

¹⁰ *Mapp v. State*, 1994 WL 91264, at *2 (Del. Supr.) (citing *Sullivan v. State*, 636 A.2d 931, 937-938 (Del. 1994)).

must make concrete allegations of actual prejudice and substantiate them or risk dismissal.¹¹ In an attempt to show prejudice, Karasevich simply asserts that his counsel was ineffective. His statements are insufficient to establish prejudice, particularly in light of the evidence against him. Therefore, I find Karasevich's grounds for relief are meritless.

To the extent that Karasevich alleges his plea was involuntary, the record contradicts such an allegation. When addressing the question of whether a plea was constitutionally knowing and voluntary, the Court looks to a plea colloquy to determine if the waiver of constitutional rights was knowing and voluntary.¹² At the guilty-plea hearing, the Court asked Karasevich whether he understood the nature of the charges, the consequences of his pleading guilty, and whether he was voluntarily pleading guilty. The Court asked Karasevich if he understood he would waive his constitutional rights if he pled guilty; if he understood each of the constitutional rights listed on the Truth-in-Sentencing Guilty Plea Form ("Guilty Plea Form"); and whether he gave truthful answers to all the questions on the form. The Court asked Karasevich if he had discussed the guilty plea and its consequences fully with his attorney. The Court asked Karasevich if he was entering into the plea as he was guilty of the charges. The Court also asked Karasevich if he was satisfied with this counsel's

¹¹ *Larson v. State*, 1995 WL 389718, at *2 (Del. Supr.)(citing *Younger*, 580 A.2d 552, 556 (Del. 1990)).

¹² *Godinez v. Moran*, 509 U.S. 389, 400 (1993).

representation. Karasevich answered each of these questions affirmatively.¹³ I find counsel's representations far more credible than Karasevich's self-serving, vague allegations.

Furthermore, prior to entering his guilty plea, Karasevich signed a Guilty Plea Form and Plea Agreement in his own handwriting. Karasevich's signatures on the forms indicate that he understood the constitutional rights he was relinquishing by pleading guilty and that he freely and voluntarily decided to plead guilty to the charges listed in the Plea Agreement. Karasevich is bound by the statements he made on the signed Guilty Plea Form, unless he proves otherwise by clear and convincing evidence.¹⁴ I confidently find that Karasevich entered his guilty plea knowingly and voluntarily and that Karasevich's grounds for relief are completely meritless.

¹³ *State v. Karasevich*, Del. Super., ID No. 1301012846 (June 26, 2013) Tr. at 3-11.

¹⁴ *Sommerville* 703 A.2d at 632.

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CONCLUSION

I find that Karasevich's counsel represented him in a competent and effective manner and that Karasevich has failed to demonstrate any prejudice stemming from the representation. I also find that Karasevich's guilty plea was entered knowingly and voluntarily. I recommend that the Court *deny* Karasevich's motion for postconviction relief as procedurally barred and completely meritless.

/s/ Andrea M. Freud
Commissioner

AMF/dsc