

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE	)	In and for Kent County
	)	
v.	)	RK13-04-0822-01
	)	Burglary 2 <sup>nd</sup> (F)
<b>AMARA K. GUMANEH</b>	)	
ID No. 1304008022	)	

**COMMISSIONER'S REPORT AND RECOMMENDATION**

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

Stephen E. Smith, Esq., Department of Justice, for the State of Delaware.

Amara K. Gumaneh, *Pro se*.

FREUD, Commissioner  
August 7, 2017

The defendant, Amara K. Gumaneh ("Gumaneh") pled guilty on October 17, 2013 to one count of Burglary in the Second Degree, 11 *Del. C.* § 825. As part of the plea *nolle prosequi* were entered on the remaining charges of Theft of Firearm, Theft \$1,500 or >, Conspiracy in the Second Degree and Criminal Mischief < \$1,000. The parties recommended that Gumaneh be sentenced to eight years at Level V, suspended after serving one year minimum mandatory for eighteen months probation.

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The Court sentenced him in accordance with the parties recommendation. Had Gumaneh gone to trial and been convicted as charged he faced a far greater period of incarceration.

Gumaneh did not appeal his conviction or sentence to the Delaware Supreme Court. Instead he filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The Court signed an order requesting that the Office of Conflicts Counsel appoint counsel for Gumaneh. While the motion was in briefing Gumaneh filed a "Motion for Correction of an Illegal Sentence." This Court denied the motion and Gumaneh appealed to the State Supreme Court. Consequently the Rule 61 motion was stayed pending the Supreme Court review. The Supreme Court ultimately denied Gumaneh's appeal. After reviewing the file, Appointed Counsel determined that there were no meritorious grounds for relief and filed a Motion to Withdraw Pursuant to Superior Court Criminal Rule 61(e)(2) with a supporting Memorandum. The memorandum detailed his review of the case and Gumaneh's arguments. The Court granted Appointed Counsel's Motion to Withdraw. Gumaneh did not file any response to the motion to withdraw or present any additional grounds for relief. Gumaneh's original counsel and the State responded to Gumaneh's *pro se* motion.

The charges stemmed from a residential burglary in January 2013 in Magnolia, Delaware. The victim was a federal agent. Gumaneh was identified as a suspect after he arranged to meet an undercover police officer to sell items taken in the burglary. A valid search warrant was executed by the police for Gumaneh's cell phone on which evidence was found indicating that he had actively participated in the burglary.

### **GUMANEH'S CONTENTIONS**

In Gumaneh's *pro se* Motion for Postconviction Relief, he raises three grounds for relief as summarized by Appointed Counsel:

- Ground one: Ineffective assistance of counsel.  
Movant asserts a general claim for ineffective assistance of counsel by asserting that Movant was denied a defense attorney 'who knows the relevant laws, does not have any conflicts in the case at hand, adheres to all legal procedural requirements, so as to not forfeit any rights and vigorously pursues a client's case at trial, through direct and cross examination, the filing of motions and the raising of objections.'
- Ground two: Violation of Constitutional Rights.  
Movant asserts that his Constitutional Rights were violated by defense counsel's failure to file a Motion to Suppress the search of the cell phone.
- Ground three: Lack of Indictment.  
Movant asserts that he received ineffective assistance of counsel

due to a delay in the Indictment being filed against the Movant and due to illegal search and seizure.

### DISCUSSION

Under Delaware law, this Court must first determine whether Gumaneh has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of his postconviction relief claim.<sup>1</sup> This is Gumaneh'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 Gumaneh'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 Gumaneh'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 Gumaneh'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, Gumaneh must meet the two-prong test of *Strickland v. Washington*.<sup>2</sup> In the context of a guilty plea challenge, *Strickland* requires a defendant show: (1) that

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<sup>1</sup> *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

<sup>2</sup> 466 U.S. 668 (1984).

counsel's representation fell below an objective standard of reasonableness; and (2) 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> This standard is highly demanding.<sup>7</sup> *Strickland* mandates that, when viewing counsel's representation, this Court must endeavor to "eliminate the distorting effects of hindsight."<sup>8</sup>

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

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<sup>3</sup> *Id.* at 687.

<sup>4</sup> *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997)(citing *Albury v. State*, 551 A.2d 53, 60 (Del. 1988))(citations omitted).

<sup>5</sup> See e.g., *Outten v. State*, 720 A.2d 547, 557 (Del. 1998) (citing *Boughner v. State*, 1995 WL 466465 at \*1 (Del. Supr.)).

<sup>6</sup> *Albury*, 551 A.2d at 59 (citing *Strickland*, 466 U.S. at 689).

<sup>7</sup> *Flamer v. State*, 585 A.2d 736, 754 (Del. 1990)(quoting *Kimmelman v. Morrison*, 477 U.S. 365, 383 (1986)).

<sup>8</sup> *Strickland*, 466 U.S. at 689.

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that Gumaneh 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 than Gumaneh's self-serving claims that his counsel's representation was ineffective. Gumaneh's counsel clearly denies the allegations. Furthermore, Appointed Counsel thoroughly reviewed the record in this case and concluded that none of Gumaneh's claims were meritorious and that no other meritorious claims could be found.

As noted, Gumaneh was facing the possibility of substantial time in prison had he been convicted, and the sentence and plea were reasonable under all the circumstances, especially in light of the evidence against him. Prior to the entry of the plea, Gumaneh and his attorney discussed the case. The plea bargain was clearly advantageous to Gumaneh. Counsel's representation was certainly well within the range required by *Strickland*. Additionally, when Gumaneh 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.<sup>9</sup> Prior to sentencing Gumaneh expressed remorse and accepted responsibility for his actions and stated he would devote himself to repaying the restitution once released from incarceration.<sup>10</sup> Consequently, Gumaneh has failed to establish that his counsel's representation was ineffective under the *Strickland* test.

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<sup>9</sup> *Mapp v. State*, 1994 WL 91264, at \*2 (Del.Supr.)(citing *Sullivan v. State*, 636 A.2d 931, 937-938 (Del. 1994)).

<sup>10</sup> *State v. Gumaneh*, Del. Super., ID No. 1304008022 (Oct. 17, 2013) Tr. at 7-8.

Even assuming, *arguendo*, that counsel's representation of Gumaneh was somehow deficient, Gumaneh must satisfy the second prong of the *Strickland* test, prejudice. In setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk dismissal.<sup>11</sup> In an attempt to show prejudice, Gumaneh 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 Gumaneh's grounds for relief are meritless.

To the extent that Gumaneh 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.<sup>12</sup> At the guilty-plea hearing, the Court asked Gumaneh whether he understood the nature of the charges, the consequences of his pleading guilty, and whether he was voluntarily pleading guilty. The Court asked Gumaneh 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 Gumaneh if he had discussed the guilty plea and its consequences fully with his

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

<sup>12</sup> *Godinez v. Moran*, 509 U.S. 389, 400 (1993).

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attorney. The Court asked Gumaneh if he was entering into the plea as he was guilty of the charge. The Court asked Gumaneh if he was aware he faced the possibility of life in prison due to his habitual offender status. The Court also asked Gumaneh if he was satisfied with this counsel's representation. Gumaneh answered each of these questions affirmatively.<sup>13</sup> I find counsel's representations far more credible than Gumaneh's self-serving, vague allegations.

Furthermore, prior to entering his guilty plea, Gumaneh signed a Guilty Plea Form and Plea Agreement in his own handwriting. Gumaneh'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. Gumaneh is bound by the statements he made on the signed Guilty Plea Form, unless he proves otherwise by clear and convincing evidence.<sup>14</sup> I confidently find that Gumaneh entered his guilty plea knowingly and voluntarily and that Gumaneh's grounds for relief are completely meritless.

### CONCLUSION

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

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<sup>13</sup> *State v. Gumaneh*, Del. Super., ID No. 1304008022 (Oct. 17, 2013) Tr. at 9.

<sup>14</sup> *Sommerville*, 703 A.2d at 632.



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postconviction relief as procedurally barred and completely meritless.

/s/ Andrea M. Freund

Commissioner

AMF/dsc