

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)	ID. No. 1409017961
)	In and for Kent County
v.)	RK14-12-0031-01
)	USC 13 (F)
TIMOTHY W. SIMPKINS)	RK15-03-0102-01
)	Breach of Condition (F)
Defendant.)	

COMMISSIONER'S REPORT AND RECOMMENDATION

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

Marie O'Connor Graham, Esquire, Deputy Attorney General, Department of Justice,
for the State of Delaware.

Timothy W. Simpkins, *Pro se.*

FREUD, Commissioner
August 29, 2017

The defendant, Timothy W. Simpkins, ("Simpkins") pled guilty on April 29, 2015 to one count of Unlawful Sexual Contact First Degree, a lesser included offense, 11 *Del. C.* § 769(3); and one count of Noncompliance with Bond Conditions, a Felony, 11 *Del. C.* § 2109. He had also been charged with Sexual Abuse of a Child by a Person in Position of Trust First Degree, Sex offender having Sexual Conduct Against a Child, and an additional count of Non-Compliance with Conditions of

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Bond. In exchange for the plea *nolle prosequis* were entered by the State on the additional charges. The parties recommended a total of ten years incarceration suspended after serving three years for varying levels of probation. The Court agreed with the recommended sentence and sentenced Simpkins accordingly.

Simpkins initially filed a post-plea Motion to Withdraw Guilty Plea, which was subsequently denied. Next he filed a *pro se* Motion for Post-conviction Relief, pursuant to Superior Court Criminal Rule 61, alleging in part ineffective assistance of counsel.

FACTS

According to the Affidavit of Probable Cause, the charges stemmed from an incident that occurred on September 23, 2014. The victim in this case was seven years old at the time of the offense. Simpkins is the boyfriend of the victim's grandmother. The three of them lived together at the time of the occurrence. On September 24, 2014, the victim made an allegation to a guidance counselor that Simpkins touches her vagina. The victim was interviewed by a forensic psychologist at the Children's Advocacy Center in Dover, Delaware. She stated during this interview that Simpkins consumes a lot of alcoholic beverages and when he does he becomes aggressive. The victim also stated that Simpkins has been putting his fingers into her vagina. She stated that most recent occurrence was September 23, 2014. She described that she would lay down in bed and that he would pull down her underwear and put his finger in her vagina. The victim provided a large amount of detail in regards to being digitally penetrated by Simpkins during the interview. She stated that once his finger was inside her, she could feel it moving around. She stated

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that she felt pain, as if she had been stabbed. It caused her to jump off the bed. These actions usually occur when her grandmother was in the shower. She stated that Simpkins listens for the water and when the water stops, he stops touching her.

SIMPKINS' CONTENTIONS

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

Ground one: Ineffective assistance of counsel.

I have maintained my innocence from the beginning but my attorney advised me to take the plea because the alleged victim was so likable that a jury would convict me even though there is no evidence to support a conviction. If not for this I would have not signed the plea. She failed to file a motion to dismiss the indictment even though I requested she do so twice. She failed to conduct interview's with people that could help prove my innocence.

Ground two: Prosecutorial misconduct.

I feel the prosecutor was prejudiced toward me from the beginning, She made a statement to the detective that she was going to burn me, before I was ever charged with a crime. There was no evidence to support an arrest. There were two other men that the victim said did it, but they were never questioned. The victim's story has changed so many times it should not have resulted in my arrest. I have maintained my innocence (sic) from the beginning, but the prosecutor would not let me take a plea with out admission guilt.

DISCUSSION

Under Delaware law, this Court must first determine whether Simpkins has met the procedural requirements of Superior Court Criminal Rule 61(I) before it may

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consider the merits of his postconviction relief claim.¹ This is Simpkins' 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 Simpkins' 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. Only Simpkins' first claim is based on ineffective assistance of counsel; therefore, he has alleged cause for his failure to have raised this claim earlier. He failed however to give any cause for his failure to have previously raised his second claim for relief and as such it is clearly barred.

At this point, Rule 61(i)(3) does not bar relief as to Simpkins' first ground 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, Simpkins must meet the two-prong test of *Strickland v. Washington*.² 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) 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

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

² 466 U.S. 668 (1984).

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on going to trial and that the result of a trial would have been his acquittal.³ 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.⁴ 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.⁵ 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.⁶ This standard is highly demanding.⁷ *Strickland* mandates that, when viewing counsel's representation, this Court must endeavor to “eliminate the distorting effects of hindsight.”⁸

Following a complete review of the record in this matter, it is abundantly clear that Simpkins has failed to allege any facts sufficient to substantiate his claim that his attorney was ineffective. I find trial counsel’s affidavit in conjunction with the record, more credible than Simpkins’ self-serving claims that his counsel’s

³ *Id.* at 687.

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

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

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

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

⁸ *Strickland*, 466 U.S. at 689.

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representation was ineffective. Simpkins' counsel clearly denies the allegations.

Simpkins was facing a substantial period of incarceration 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, Simpkins and his attorney discussed the case. The plea bargain was clearly advantageous to Simpkins. Counsel's representation was certainly well within the range required by *Strickland*. Additionally, when Simpkins 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.⁹ Consequently, Simpkins has failed to establish that his counsel's representation was ineffective under the *Strickland* test. Even assuming, *arguendo*, that counsel's representation of Simpkins was somehow deficient, Simpkins 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.¹⁰ In an attempt to show prejudice, Simpkins 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 Simpkins' grounds for relief are meritless.

To the extent that Simpkins alleges his plea was involuntary, the record

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

¹⁰ *Larson v. State*, 1995 WL 389718, at *2 (Del. Supr.) (citing *Younger*, 580 A.2d 552, 556 (Del. 1990)).

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.¹¹ At the guilty-plea hearing, the Court asked Simpkins whether he understood the nature of the charges, the consequences of his pleading guilty, and whether he was voluntarily pleading guilty. The Court asked Simpkins 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 Simpkins if he had discussed the guilty plea and its consequences fully with his attorney. The Court asked Simpkins if he was entering into the plea as he was guilty of the charges. The Court also asked Simpkins if he was satisfied with this counsel’s representation. Simpkins answered each of these questions affirmatively.¹² I find counsel’s representations far more credible than Simpkins’ self-serving, vague allegations.

Furthermore, prior to entering his guilty plea, Simpkins signed a Guilty Plea Form and Plea Agreement in his own handwriting. Simpkins’ 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

¹¹ *Godinez v. Moran*, 509 U.S. 389, 400 (1993).

¹² *State v. Simpkins*, Del. Super., ID No. 1409017961 (April 29, 2015) Tr. at 4-9.

Form and Plea Agreement in his own handwriting. Simpkins' 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. Simpkins is bound by the statements he made on the signed Guilty Plea Form, unless he proves otherwise by clear and convincing evidence.¹³ I confidently find that Simpkins entered his guilty plea knowingly and voluntarily and that Simpkins' grounds for relief are completely meritless.

CONCLUSION

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

/s/ Andrea M. Freud

Commissioner

AMF/dsc

¹³ *Somerville* 703 A.2d at 632.