

Fletcher be sentenced to twenty-five years, suspended after ten years minimum mandatory for probation. The Court agreed with the recommended sentence and immediately sentenced Tilghman accordingly.

Tilghman did not appeal his conviction or sentence to the Delaware Supreme Court. On January 13, 2016 he filed his first motion for postconviction relief pursuant to Superior Court Criminal Rule 61. Then on April 22, 2016, he filed an amended motion.

FACTS

The charges stem from Fletcher's repeated sexual intercourse with the fourteen year-old niece of Fletcher's girlfriend. The abuse came to light when Fletcher's girlfriend, Brook Willey, walked into her living room one evening and saw Fletcher having intercourse with the victim, her fourteen year-old niece. The victim was taken to be interviewed at the Child Advocacy Center where she detailed the lengthy extent of Fletcher's repeated sexual abuse. Tilghman was a registered sex offender at the time of this incident.

TILGHMAN'S CONTENTIONS

In his original motion, he raises the following grounds for relief:

- Ground one: Sixth Amendment.
Superior Court violated defendant's right to due process guaranteed by the United States and Delaware Constitution when it failed to answer defendant's Motion to Withdrawl (sic) Counsel and to inquire sufficiently and timely into the actual conflict of interest and/or

irreconcilable conflict that existed between defendant and counsel.

Ground two: Coerced into taking a Guilty Plea.
Attorney Suzanne Macpherson-Johnson coerced defendant into guilty plea stating that she couldn't win a favorable outcome and that State would file for habitual offender and I would be given a life term and that being as though this is Kent County and with Judge Witham being my presiding judge it's a guaranteed guilty verdict, even though I've always claim (sic) my innocence pertaining to this case.

Ground Three: Suppression of Favorable Evidence.
Counsel failed to give defendant copies of tangible objects, documents, test and any reports of examination on advice from States attorney.

Ground four: Right to a Speedy Trial/Failure to Subpoena.
Counsel never subpoena (sic) defendant's only witness which would have been the expert examiner that the state sent the DNA evidence to pertaining to defendants case who would have said that defendants not a match to any DNA within the victim, stating that the State would have countered that by bringing in the detective who interviewed victim and the S.A.N.E. [Sexual Assault Nurse Examiner] nurse at the hospital who did the examination on that they would be in favor to

believe all the States witnesses over defendant cause it would have been my word against them. State was allowed several continuances to test DNA evidence (330 days).

- Ground five: Failure to Communicate.
Failure to investigate facts and evidence of the case apart from the examination of probable cause sheet supporting defendant's arrest. Failure to explore contradictions in victims and witness statements stating that she wasn't allowed to interview victim because of her age and that she already had the witness statement from the State's attorney already. Failure to accept any calls at her office, never schedule a video conference and only came to see defendant 2 days before the next case review.
- Ground Six: Failure to file Motion to Dismiss.
Counsel refused to file for a Motion to dismiss the case on grounds of no physical evidence and stating that all we would be doing is wasting the State's time.
- Ground Seven: Failure to file Bill of Particulars.
Counsel refused to file a Bill of Particulars in the case stating that it wouldn't help me or my case and that if I went to trial all it would do was delay the process all over again.
- Ground Eight: Failure to file Bail Modification.
Counsel refused to file a Bail Modification

until 9 months later (July 22, 2015) stating that the court would not grant any motion that I put in because of the severity of defendants charges. (Bail \$410,000 case only).

On April 22, 2016, Tilghman filed an amended motion for postconviction relief and added five additional grounds.¹

Ground one: Ineffective Assistance of Counsel
[Defendant lists subparts (1) through 13©.] In summary counsel failed to function as counsel guaranteed to the movant by the Sixth Amendment. Counsel's performance was so deficient as render the whole process meaningless. The movant's pleas was not made voluntary, knowingly, or intelligently and should be rendered moot and a judgement (sic) of acquittal entered into the record.

Ground two: Judicial Misconduct.
[Defendant lists subparts (1) through (4).] In summary the Court did not take movant's complaints about counsel seriously. Counsel never filed any motions before the court or subpoena any witness before the court. Superior Court never interviewed the movant as to the source of conflict thus violating

¹ Fletcher lists under each ground numerous allegations (subparts) which for the sake of brevity I have not listed in full. I have included his summary of each ground. I note for the record that in none of the grounds does he in any way state what prejudice he suffered as a result of the alleged errors of Trial Counsel, the State or the Court.

movant's Due Process, Sixth and Fourteenth Amendment rights guaranteed to counsel.

Ground three: Speedy Trial
[Defendant lists subparts (1) through (3). No "In summary"]

Ground Four: Prosecutorial Misconduct.
[Defendant lists subparts (1) through (5).] In summary the State helped to deprive the movant of his Fourth, Fifth, Sixth and Fourteenth Amendment rights by unnecessarily delaying trial, withholding exculpatory evidence, conspiring with movant's counsel to pressure movant into taking a plea, and to violate his rights to a speedy trial.

Ground Five: Actual Innocence.
[Defendant lists subparts (1) and (2) with no "In summary"]

DISCUSSION

Under Delaware law, this Court must first determine whether Tilghman 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 Tilghman's first motion for postconviction relief, and it was filed within one year of his conviction

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

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 Tilghman'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 Tilghman'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 Tilghman'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, Tilghman 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) 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

³ 466 U.S. 668 (1984).

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).

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 that Tilghman 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 Tilghman's self-serving claims that his counsel's representation was ineffective. Tilghman's counsel clearly denies the allegations.

As noted, Tilghman was facing the possibility of at least 70 years minimum mandatory 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, Tilghman and his attorney discussed the case. The

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.

plea bargain was clearly advantageous to Tilghman. Counsel's representation was certainly well within the range required by *Strickland*. Additionally, when Tilghman 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, Tilghman has failed to establish that his counsel's representation was ineffective under the *Strickland* test.

Even assuming, *arguendo*, that counsel's representation of Tilghman was somehow deficient, Tilghman 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.¹¹ In an attempt to show prejudice, Tilghman 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 Tilghman's grounds for relief are meritless.

To the extent that Tilghman 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

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

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

determine if the waiver of constitutional rights was knowing and voluntary.¹² At the guilty-plea hearing, the Court asked Tilghman whether he understood the nature of the charges, the consequences of his pleading guilty, and whether he was voluntarily pleading no contest. The Court asked Fletcher if he agreed that the State had sufficient evidence to convict him of the charge. The Court asked Tilghman 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 Tilghman if he had discussed the guilty plea and its consequences fully with his attorney. The Court asked Tilghman if he was entering into the plea as he was guilty of the charge. The Court also asked Tilghman if he was satisfied with this counsel’s representation. Tilghman answered each of these questions affirmatively.¹³ I find counsel’s representations far more credible than Tilghman’s self-serving, vague allegations.

Furthermore, prior to entering his guilty plea, Tilghman signed a Guilty Plea Form and Plea Agreement in his own handwriting. Tilghman’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. Tilghman is bound by the statements he made

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

¹³ *State v. Tilghman*, Del. Super., ID No. 1411005595 (Oct. 5, 2015) Tr. at 3-9.

State v. Tilghman
ID No. 141105595
October 12, 2017

on the signed Guilty Plea Form, unless he proves otherwise by clear and convincing evidence.¹⁴ I confidently find that Tilghman entered his guilty plea knowingly and voluntarily and that Tilghman's grounds for relief are completely meritless.

CONCLUSION

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

/s/ Andrea M. Freud

Commissioner

AMF/dsc

¹⁴ *Somerville* 703 A.2d at 632.