

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)	ID. Nos. 1506004622 & 1506023175
)	In and for Kent County
)	
v.)	RK15-06-0600-01
)	USC/Child (F)
LAMARR TROWER,)	RK15-06-0601-01
)	Rape 4 th < 18 (F)
Defendant.)	RK15-07-0627-01
)	Theft < \$1500 (M)

COMMISSIONER'S REPORT AND RECOMMENDATION

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

Gregory R. Babowal, Deputy Attorney General, Department of Justice, for the State of Delaware.

Lamarr Trower, *Pro se*.

FREUD, Commissioner
June 26, 2017

The defendant, Lamarr Trower (“Trower”), pled guilty at Final Case Review on December 4, 2015 to one count of Sex Offender Unlawful Sexual Contact Against a Child, 11 *Del. C.* § 777A, one count of Rape Fourth Degree, under 18, 11 *Del. C.* § 770 and one count of Theft under \$1,500, 11 *Del. C.* § 841. He was also facing, another count of Theft under \$1,500, one count of Conspiracy Second Degree and Criminal Mischief under \$1,000. In exchange for the plea *nolle prosequis* were

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entered by the State on the three additional charges. A presentence investigation report was ordered. On February 16, 2016 Trower filed a Motion to Withdraw Guilty Plea, *pro se*. The motion was withdrawn on February 23, 2016. On March 7, 2016 Trower was sentenced to a total of forty-one years incarceration suspended after serving five years for varying levels of probation. That same day the court docketed Trower's first Motion for Modification. That motion was denied on April 18, 2016.

On April 18, 2016, Trower filed a Motion for Review of Sentence. One reason Trower requested the review is his incarceration in Super Maximum Housing Unit ("SHU") at James T. Vaughn Correctional Center for eleven months with no access to treatment for anger management, sex offender, substance abuse, etc.. A review of sentence was conducted on May 20, 2016. The Court ordered that Trower be moved from SHU housing at James T. Vaughn Correctional Center to Sussex Correctional Center. The State appealed the resentencing to the Delaware Supreme Court on June 17, 2016. During this time Trower filed a letter to Judge Young regarding modifying his sentence (May 9, 2015), a motion to modify sentence (May 9, 2015), a motion to dismiss indictment (May 19, 2016), motion for review of sentence (May 20, 2016), letter to Judge Young requesting a mental health review be scheduled (May 25, 2016), a petition for habeas corpus (June 6, 2016), a motion requesting evidentiary hearing and/or correction of breach of superior court judge's sentencing order (June 9, 2016), and letter to Judge Young re: transfer to Sussex Correctional Institution (June 13, 2016). On July 27, 2016 the Department of Justice voluntarily dismissed the appeal to the Delaware Supreme Court. On August 1, 2016, the Department of Justice filed a motion to modify the sentence order entered on May 20, 2016. The

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sentence was modified on August 17, 2016 to rescind the language regarding transferring Trower to Sussex Correctional Institution.

FACTS

The charges stemmed from two incidents. On June 6, 2015, Trower was arrested for having intercourse with Wynyer L. Hiltner (Hiltner) in April 2015 who was sixteen years old at the time and Trower, who was a registered sex offender, and knew Hiltner was under eighteen years old. Hiltner and her mother reported the incident to Detective Boney of Dover Police Department on June 6, 2015. The second incident concerned a burglary Trower committed at the Elizabeth Murphy School, 14 S.W. Kings Highway, Dover, Delaware. The burglary occurred the early morning hours of January 26, 2015. A window was broken to a basement door, an office door was forced open and a safe removed. The damaged, empty safe was recovered in a trash can on February 7, 2015 at 215 W. Reed Street, Dover, Delaware. Detective Wood of Dover Police Department reviewed downtown surveillance cameras and observed two black male subjects pushing a trash can down Reed Street on January 26, 2015 at approximately 11:20 p.m. A witness identified Trower and "Montez Lively." Detective Web learned that Trower was staying at 215 W. Reed Street around the time of the incident. Trower denied committing the burglary but admitted he was in a relationship with Jaliqua Mullen, a former student of the Elizabeth Murphy School who was living at 215 W. Reed Street. Property damage was estimated at \$75.00 and the safe and contents were valued at approximately \$1,600.00.

TROWER'S CONTENTIONS

Next, on March 30, 2016, Trower filed the instant Motion for Postconviction Relief pursuant to Superior Court Rule 61. In his motion, he raises the following grounds for relief:

Ground One: Unfulfilled Plea agreement.
The Superior Court rule 11c (D)(e) sets out the procedures that a judge must follow before accepting a plea of guilty. The court has an affirmative duty to ascertain whether a plea of guilty has been entered knowingly and voluntarily. [See motion for citations]. The United State Supreme Court has made it quite clear in law that a constitutional right does exist to assuring that a guilty plea is made knowingly and voluntarily. See Fifth Amendment rights.

Ground Two: Effective assistance of counsel.
Counsel poor lack of effective representation that fail below the ethic standards of a lawyers professional conduct code of his client. He was unfairly deprive (sic) of his protective sixth amendment rights.[see motion for continuation of subset of Ground two listed as "1-9" .

No supporting memorandum was filed.

On May 6, 2016, Trower filed an Amended First Motion for Postconviction Relief. He raises the following grounds:

Ground one: Effective assistance of counsel.
Specific acts and omissions to take a plea agreement

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against his will and was involuntary (sic). [SEE one above, same language -The Superior Court rule 11c (D)(e) sets out the procedures that a judge must follow before accepting a plea of guilty. The court has an affirmative duty to ascertain whether a plea of guilty has been entered knowingly and voluntarily. [See motion for citations]. The United State Supreme Court has made it quite clear in law that a constitutional right does exist to assuring that a guilty plea is made knowingly and voluntarily.] [New language - The Fifth Amendment right invokes state prosecution of the court and bars prosecutors of accepting statements plea agreement form accuse, when state court has failed to adequately give the mental health inmate right of complete hearing psychiatric evidence...then repeat of Ground 2 above Counsel poor lack of effective representation that fail below the ethic standards of a lawyers professional conduct code of his client. He was unfairly deprive (sic) of his protective sixth amendment rights.[see motion for continuation of subset of Ground two listed as "1-9" .]

Ground two:

Unfulfilled Plea agreement.

The named movant present genuine facts on to here (sic) this motion before sentencing that he can provide 'a fair just reason requesting postconviction relief for his involuntary plea agreement. There are several factors. [see motion for continuation of subset of Ground two 1 - 2].

No supporting memorandum was filed.

On July 18, 2016, Trower filed a "Second Amended Motion for Postconviction

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Relief More Grounds to add to my Postconviction Relief Motion, Evidentiary Hearing.” The “grounds” are not discernible from this filing and will be considered as Trower’s attempt to submit to the court his definitions of Rape, Statutory rape, Age of Consent, Consent and Mens rea. No supporting memorandum was filed. Trower filed a reply to the affidavit of defense counsel and a separate reply to the Department of Justice’s response to his motion.

DISCUSSION

Under Delaware law, this Court must first determine whether Trower has met the procedural requirements of Superior Court Criminal Rule 61(I) before it may consider the merits of his postconviction relief claim.¹ This is Trower’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 Trower’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 Trower’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 Trower’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

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

counsel, Trower 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 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

² 466 U.S. 668 (1984).

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)).

endeavor to “eliminate the distorting effects of hindsight.”⁸

Following a complete review of the record in this matter, it is abundantly clear that Trower 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 that Trower’s self-serving claims that his counsel’s representation was ineffective. Trower’s counsel clearly denies the allegations.

As noted, Trower was facing substantial incarceration time 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, Trower and his attorney discussed the case. The plea bargain was clearly advantageous to Trower. Counsel’s representation was certainly well within the range required by *Strickland*. Additionally, when Trower 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, Trower has failed to establish that his counsel’s representation was ineffective under the *Strickland* test.

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

⁸ *Strickland*, 466 U.S. at 689.

⁹ *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.¹⁰ In an attempt to show prejudice, Trower 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 Trower's grounds for relief are meritless.

To the extent that Trower 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.¹¹ At the guilty-plea hearing, the Court asked Trower whether he understood the nature of the charges, the consequences of his pleading guilty, and whether he was voluntarily pleading guilty. The Court asked Trower 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 Trower if he had discussed the guilty plea and its consequences fully with his attorney. The Court asked Trower if he was entering into the plea as he was guilty of the charges. The Court also asked Trower if he was satisfied with this counsel's

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

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

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representation. Trower answered each of these questions affirmatively.¹² I find counsel's representations far more credible than Trower's self-serving, vague allegations.

Furthermore, prior to entering his guilty plea, Trower signed a Guilty Plea Form and Plea Agreement in his own handwriting. Trower'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. Trower 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 Trower entered his guilty plea knowingly and voluntarily and that Trower's grounds for relief are completely meritless.

CONCLUSION

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

/s/Andrea M. Freud
Commissioner

¹² *State v. Trower*, Del. Super., ID Nos. 1506004622, 1506023175, Tr. at 3 to 10.

¹³ *Sommerville* 703 A.2d at 632.