

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)	In and for Kent County
)	ID. No. 1605002879
v.)	
)	RK16-06-0081-01
ANTONIO HUGHES,)	Child Abuse 2 nd (F)
)	RK16-06-0082-01
Defendant.)	End. Welf. Child (M)

COMMISSIONER'S REPORT AND RECOMMENDATION

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

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

Antonio Hughes, *Pro se*.

FREUD, Commissioner
June 29, 2018

The defendant, Antonio Hughes (“Hughes”), pled guilty on October 25, 2016 to one count of one count of Child Abuse in the Second Degree, 11 *Del. C.* § 1103, and one count of Endangering the Welfare of a Child, 11 *Del. C.* § 1102. In exchange for the plea the State entered a *nolle prosequi* for the remaining count of Assault in the Second Degree. As part of the plea the parties recommended that Hughes be immediately sentenced to a total of three years incarceration suspended after ninety

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days followed by one year of probation. The Court agreed with the recommendation and sentenced Hughes accordingly and gave him credit for time served. The charges involved Hughes causing physical harm to his three year old son. Hughes did not appeal his conviction or sentence to the Delaware Supreme Court. Instead he filed, *pro se*, the instant motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on August 28, 2017.

HUGHES' CONTENTIONS

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

Ground one: Brady Rule.
During the investigation my phone records were seized from the week before the day I was arrested; which was May 8, 2016. Majority of the dialogue included in those conversations in which I spoke with numerous people including my baby mother, her parents, and my parents, were about me accepting Child Abuse and Endangering the Welfare of Child charges in order to keep my son out of CPS. I decided to accept the charges because I was under emotional distress after doing so much to be in my sons life and on the verge of losing him, also nobody was coming forward and CPS was threatening to take my son. Prosecution neglected to add that exculpatory evidence which was an affirmative demonstration of my innocence.

Ground two: Materiality under Brady: "Bagley Rule."

With that Brady material there was reasonable probability that, had the evidence been disclosed to the court, the result of the proceedings would have been different. In regards to the three elements of the Bagley Rule (1) The evidence was favorable to me because it was exculpatory (2) the evidence was suppressed by the state willfully because there's no possible way for them not to have heard these conversations of me accepting responsibility of these charges, in addition, the conversations they did include in the discovery left out the parts that were mentioned about me accepting those charges and (3) Prejudice must have ensued for them to intentionally neglect to produce exculpatory evidence.

Ground three: Delaware rules for professional (sic) conduct: Rule 3.8 special responsibilities of Prosecutor.
Subsection (d)(1 & 2) states, in summary, when new credible and material evidence and/or information is discovered which shows a defendant innocent of a charge, the prosecutor has to disclose that information to the defendant and the court in a timely fashion, unless a court authorized a delay. Therefore, instead of the prosecution seeking justice, the prosecutor sought an easy victory which was not fair to neither me nor the victim. Consequently, I entered a guilty plea around October of 2016 because I thought there was nothing else I could do since the

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prosecution made it difficult for the truth to come out.

The above grounds represent all of Hughes' arguments. He did not file a Memorandum with the motion or a Reply to the State's response.

DISCUSSION

Under Delaware law, this Court must first determine whether Hughes 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 Hughes' 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 Hughes' 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. Hughes makes no concrete claim for his failure to have raised his claims earlier other than the self-serving statement that he took the plea to protect his son who he was accused of harming. Additionally his claims are entirely meritless. As the State notes Hughes waived his rights by pleading guilty and there were no discovery violations nor any exculpatory evidence that was suppressed. Hughes claims are procedurally barred for failure to demonstrate cause and prejudice and as meritless.

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

To the extent that Hughes 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.² At the guilty-plea hearing, the Court asked Hughes whether he understood the nature of the charges, the consequences of his pleading guilty, and whether he was voluntarily pleading guilty. The Court asked Hughes 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 Hughes if he had discussed the guilty plea and its consequences fully with his attorney. The Court asked Hughes if he was entering into the plea as he was guilty of the charges. The Court also asked Hughes if he was satisfied with this counsel’s representation. Hughes answered each of these questions affirmatively.³

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

² *Godinez v. Moran*, 509 U.S. 389, 400 (1993).

³ *State v. Hughes*, Del. Super., ID No. 1605002879 (Oct. 25, 2016) tr. at 3-9.

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Guilty Plea Form, unless he proves otherwise by clear and convincing evidence.⁴ I confidently find that Hughes entered his guilty plea knowingly and voluntarily and that Hughes' grounds for relief are completely meritless.

CONCLUSION

I conclude that Hughes has failed to demonstrate any cause or prejudice for his failure to have raised his claims sooner and that they are meritless. I also find that Hughes' guilty plea was entered knowingly and voluntarily. I recommend that the Court *deny* Hughes' motion for postconviction relief as procedurally barred and completely meritless.

/s/ Andrea M. Freud

Commissioner

AMF/dsc
oc: Prothonotary

⁴ *Sommerville v. State*, 703 A.2d 629, 632 (Del. Supr.).