

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
Plaintiff,)
)
) Cr. ID No. 1411014980
)
GERRIN L. WALLACE,)
)
Defendant.)
)

Submitted: May 1, 2019
Decided: May 22, 2019

**COMMISSIONER'S REPORT AND RECOMMENDATION THAT
DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE SUMMARILY DISMISSED**

Julie Finocchiaro, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Gerrin L. Wallace, Howard R. Young Correctional Institution, Wilmington,
Delaware, *pro se*.

PARKER, Commissioner

This 22nd day of May 2019, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND, FACTS AND PROCEDURAL HISTORY

1. On November 24, 2014, Defendant Gerrin L. Wallace was arrested and charged with home invasion, four counts of Possession of a Firearm During the Commission of a Felony ("PFDCF"), First Degree Robbery, Second Degree Burglary, Aggravated Menacing, Wearing a Disguise During the Commission of a Felony, Criminal Impersonation and Conspiracy in the Second Degree.

2. The charges stem from an incident wherein Wallace and a co-conspirator entered an apartment and took a video game and other items at gunpoint. The co-conspirator was not caught and remains at large.

3. Wallace was found by the police running in the area nearby and he matched the description of one of the suspects. The victim positively identified Wallace as being the suspect who held the gun during the incident.

4. Following Wallace's arrest, he admitted going to the victim's apartment with a co-conspirator.¹ Wallace admitted that he was in possession of a Black semiautomatic 32 handgun.² Wallace admitted that he and his co-conspirator

¹ Affidavit of Probable Cause, Exhibit B, to Superior Court Docket No. 1.

² Affidavit of Probable Cause, Exhibit B, to Superior Court Docket No. 1.

entered the apartment at gunpoint, stole property, and then fled.³ Wallace told the police that he and his co-conspirator initially left the area together in a vehicle but agreed that they should split up so he got out of the car.⁴ Wallace ran back towards the victim's apartment building through the woods and was heading back towards a bus stop when he was captured by the police.⁵

5. On the day of trial, September 1, 2015, Wallace pled guilty to one count of Home Invasion, PFDCF, Aggravated Menacing and Conspiracy in the Second Degree. In exchange for the guilty plea, the State agreed to dismiss the other charges in the indictment.⁶ The parties agreed to request a presentence investigation and to open sentencing. As part of the plea agreement, the parties agreed that Wallace would not ask for less than a 10-year prison term at the time of sentencing.⁷

6. By accepting the plea, Wallace was facing a minimum mandatory sentence of 9 years and a maximum sentence of up to 58 years.⁸ If Wallace had not accepted the plea and proceeded to trial, Wallace was facing a minimum mandatory sentence of 21 years of Level V incarceration and a

³ Affidavit of Probable Cause, Exhibit B, to Superior Court Docket No. 1.

⁴ Affidavit of Probable Cause, Exhibit B, to Superior Court Docket No. 1.

⁵ Affidavit of Probable Cause, Exhibit B, to Superior Court Docket No. 1.

⁶ Superior Court Docket No. 14- Plea Agreement of September 1, 2015.

⁷ Superior Court Docket No. 14- Plea Agreement of September 1, 2015.

⁸ September 1, 2015 Plea Transcript, at pg. 4.

maximum sentence of substantially more time than 58 years if convicted at trial.⁹

7. On February 11, 2016, Wallace was sentenced to a total of 35 years at Level V, suspended after 10 years, for decreasing levels of probation.

8. Wallace did not file a direct appeal to the Delaware Supreme Court.

9. On June 7, 2017, Wallace filed a motion for reduction of sentence which was denied by the Superior Court on September 25, 2017.¹⁰

WALLACE'S RULE 61 MOTION

10. On January 7, 2019, Wallace filed the subject Rule 61 motion. This motion was filed almost 3 years after Wallace's conviction became final. In the subject motion, Wallace seeks to challenge the sufficiency of the evidence against him, the voluntariness of his guilty plea, claims violations of his constitutional rights prior to the entry of his plea, claims prosecutorial misconduct prior to the entry of his plea, claims ineffective assistance of counsel in the handling of his plea, and claims that his motion for sentence reduction was not effectively presented and was not properly decided.

11. Wallace's Rule 61 motion is time-barred, otherwise procedurally barred and waived.

⁹ September 1, 2015 Plea Transcript, at pg. 4.

¹⁰ See, Superior Court Docket Nos. 25 & 26.

12. Initially, it is noted that Wallace's contentions that his postconviction motion for sentence reduction was not effectively presented and not properly decided should have been presented by way of appeal of that motion to the Delaware Supreme Court. Wallace did not appeal that decision. That motion was denied by the Superior Court in September 2017. Over one year later, in January 2019, Wallace sought review of that decision by way of filing this Rule 61 motion. Wallace's attempt to seek review of the denial of his motion for sentence reduction is untimely at this late date. Moreover, Wallace is not permitted to seek review of the denial of that postconviction motion by way of a collateral Rule 61 motion.

Wallace's Claims Were Waived Upon the Entry of His Plea

13. A defendant is bound by his answers on the guilty plea form and by his testimony at the plea colloquy in the absence of clear and convincing evidence to the contrary.¹¹ In this case, the Truth-in-Sentencing Guilty Plea Form, Plea Agreement and plea colloquy reveal that Wallace knowingly, voluntarily and intelligently entered a guilty plea to the charges for which he was sentenced.¹²

¹¹ *State v. Harden*, 1998 WL 735879, *5 (Del. Super.); *State v. Stuart*, 2008 WL 4868658, *3 (Del. Super. 2008).

¹² September 1, 2015 Plea Transcript; September 1, 2015 Plea Agreement; September 1, 2015 Truth-In-Sentencing Guilty Plea Form.

14. At the plea colloquy, Wallace represented to the court that he had read and understood the plea agreement and the Truth-in-Sentencing Guilty Plea Form, and that he had reviewed the terms of the plea with his counsel and that counsel answered any questions he had to his satisfaction.¹³

15. Wallace also represented that he discussed with his trial counsel the evidence in the case, any potential defenses that may exist, and any questions he had so that he was able to fully understand the decision as to whether or not to accept the plea.¹⁴

16. Wallace represented to the court that nobody was forcing him to enter his plea. Wallace represented that he was freely and voluntarily pleading guilty to the charges for which he was pleading guilty. Wallace represented that he was not being threatened or forced to do so by his attorney, by the State, or by anyone else.¹⁵ Wallace represented that the decision to accept the plea was his and his alone.¹⁶

17. Wallace admitted his guilt for the each of the charges for which he pled guilty.¹⁷

¹³ September 1, 2015 Plea Transcript, *18-19.

¹⁴ September 1, 2015 Plea Transcript, *19.

¹⁵ September 1, 2015 Plea Transcript, *19; Truth-In-Sentencing Guilty Plea Form dated September 1, 2015.

¹⁶ September 1, 2015 Plea Transcript, *9-10, 21.

¹⁷ September 1, 2015 Plea Transcript, at *11-14.

18. During the plea colloquy and in the Truth-in-Sentencing Guilty Plea Form, Wallace represented that he understood that by pleading guilty he was waiving his constitutional rights: to have a trial; to be presumed innocent until the State proves each and every part of the charges against him beyond a reasonable doubt; to a trial by jury; to hear and question witnesses; to present evidence in his defense; to testify or not testify; and to appeal, if convicted.¹⁸

19. Wallace represented that he understood that he was waiving each and every one of those rights by pleading guilty.¹⁹

20. Only after finding that Wallace's plea was entered into knowingly, intelligently and voluntarily, did the court accept the plea.²⁰ Specifically, following the colloquy with Wallace, the Superior Court stated: "All right, Mr. Wallace, I believe that your plea is made knowingly and intelligently, with a full understanding of the nature of the charges and the consequences of your plea, and therefore, your guilty plea is accepted."²¹

21. Wallace has not presented any clear, contrary evidence to call into question his testimony at the plea colloquy, Plea Agreement or answers on the

¹⁸ September 1, 2015 Plea Transcript, at * 9-10; Truth-in-Sentencing Guilty Plea Form dated September 1, 2015.

¹⁹ September 1, 2015 Plea Transcript, at * 9-10, 21-22; Truth-in-Sentencing Guilty Plea Form dated September 1, 2015.

²⁰ September 1, 2015 Plea Transcript, at *22.

²¹ September 1, 2015 Plea Transcript, at *22.

Truth-In Sentencing Guilty Plea Form.

22. Indeed, the record reflects that Wallace was adequately advised of the evidence against him, the charges, the plea offer, and the penalties he would be facing. The record further reflects that Wallace understood the rights and defenses he was waiving by entering into the plea, that he understood he was waiving his right to test the strength of the State's evidence, that he understood that he was waiving his right to appeal, that he was not promised anything, nor forced or threatened to enter into the plea, and that he was pleading guilty because he was guilty of the charges comprising the plea agreement.

23. Wallace's guilty plea represented a rational choice given the pending charges, the overwhelming evidence against him including his admissions to the police following his arrest, and the possible sentence he was facing. Indeed, if convicted at trial he was facing a minimum mandatory prison sentence of 21 years at trial. By accepting the plea, Wallace was sentenced to a ten-year prison term, 11 years less than the minimum mandatory sentence he would be facing if convicted at trial.

24. Since Wallace's plea was entered into voluntarily, intelligently and knowingly, he waived his right to challenge any alleged errors, deficiencies or defects occurring prior to the entry of his plea, even those of constitutional

proportions.²² All of Wallace's claims presented herein, including those alleging ineffective assistance of counsel, stem from allegations of defects, errors, misconduct and deficiencies which existed at the time of the entry of the plea. All of Wallace's claims were waived when he knowingly, freely and intelligently entered his plea.²³

Wallace's Claims Are Also Procedurally Barred

25. Wallace's claims are also procedurally barred. If a procedural bar exists, then the claim is barred and the court should not consider the merits of the postconviction claim.²⁴

26. Rule 61 (i) imposes four procedural imperatives: (1) the motion must be filed within one year of a final order of conviction;²⁵ (2) any basis for relief must be asserted in the first timely filed motion for postconviction relief absent exceptional circumstances (ie. discovery of *new* evidence or *new* rule of constitutional law) warranting a subsequent motion being filed; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules unless the movant shows prejudice to his rights and cause; for relief; and (4) any basis for relief must not have been formally adjudicated

²² *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Modjica v. State*, 2009 WL 2426675 (Del. 2009); *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2004).

²³ See, *Mills v. State*, 2016 WL 97494, at *3 (Del.)

²⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

²⁵ Super.Ct.Crim.R. 61(i)(1).

in any proceeding. The bars to relief however do not apply to a claim that the court lacked jurisdiction or to a claim that new evidence exists that movant is actually innocent or that there is a new law, made retroactive, that would render the conviction invalid.²⁶

27. In the subject action, Rule 61(i)(1) precludes this court from considering Wallace's claims raised herein because Wallace's motion is time-barred.²⁷ In order to be timely filed, a Rule 61 motion must be filed within one year of a final order of conviction.²⁸ In this case, the final order of conviction was in March 2016,²⁹ and this motion was filed in January 2019, almost three years later, outside the applicable one year limit. Wallace's claims, at this late date, are time-barred.

28. Rule 61(i)(2) and Rule 61(i)(5) further preclude this court's consideration of Wallace's motion since Wallace has not satisfied the pleading requirements for proceeding with this motion. Since Wallace's motion was not timely filed, in order to overcome the procedural hurdles, Wallace must establish: 1) that *new* evidence exists that creates a strong

²⁶ Super.Ct.Crim.R. 61 (effective June 4, 2014).

²⁷ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

²⁸ Super.Ct.Crim.R. 61(i)(1).

²⁹ Super.Ct.Crim.R. 61(m)(1).

inference that he is actually innocent of the charges for which he was convicted, or 2) the existence of a *new* rule of constitutional law made retroactive to this case that would render his convictions invalid.

29. Wallace has not made any such showing in this case and therefore his motion should be summarily dismissed. Wallace has not pled with particularity that any *new* evidence exists that creates a strong inference that he is actually innocent of the charges for which he pled guilty. In fact, at Wallace's sentencing in February 2016, the Superior Court noted that Wallace would not be able to establish a claim of actual innocence in light of his admissions of his involvement in the incident at issue.³⁰

30. Wallace does not raise anything new or recently discovered. All of Wallace's claims stem from facts known to him at the time of his plea in 2015 and sentencing in February 2016. In the subject motion, Wallace does not raise any new evidence, let alone any *new* evidence that would create a strong inference that he is actually innocent. Moreover, Wallace does not claim the existence of any *new* rule of constitutional law that would be applicable to his case. As such, Wallace has failed to meet the pleading requirements allowing

³⁰ February 11, 2016 Sentencing Transcript, at *3-4.

him to proceed with his Rule 61 motion. Wallace's motion should be summarily dismissed.

31. Rule 61(i)(3) further prevents this court from considering any claim raised by Wallace at this late date that had not previously been raised. Wallace was aware of, had time to, and the opportunity to raise the claims presented herein in a timely filed motion. Wallace's claims raised in the subject motion stem from facts known to him at the time of his plea in 2015 and sentencing in 2016.

32. Wallace has not established any prejudice to his rights and/or cause for relief. Wallace had time and opportunity to raise any issue raised herein in a timely filed postconviction motion. There is no just reason for Wallace's delay in doing so. Having been provided with a full and fair opportunity to present any issue desired to be raised in a timely filed motion, any attempt at this late juncture to raise, re-raise or re-couch a claim is procedurally barred.

33. The claims raised in Wallace's motion are waived, time-barred and otherwise procedurally barred.

For all of the foregoing reasons, Wallace's motion for postconviction relief should be SUMMARILY DISMISSED.

IT IS SO RECOMMENDED.



Commissioner Lynne M. Parker

cc: Prothonotary
Ross A. Flockerzie, Esquire