

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE) ID No. 1803019970
) In and for Kent County
)
) RK18-04-0167-01 Att/ Rape 1st (F)
TYREE L. LOCKETT,) RK18-06-0035-01 Endang. Wel. Chld. (M)
) RK18-06-0038-01 Endang. Wel. Chld. (M)
)
) Defendant.

COMMISSIONER'S REPORT AND RECOMMENDATION

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

Kathleen A. Dickerson, Esquire, Deputy Attorney General, Department of Justice, for the State of Delaware.

Tyree L. Lockett, *pro se*.

FREUD, Commissioner
June 3, 2020

The defendant, Tyree L. Lockett (“Lockett”), entered a Robinson plea on September 12, 2018 to one count of Attempted Rape in the First Degree, 11 *Del. C.* § 770(a)(1) and two counts of Endangering the Welfare of a Child, 11 *Del. C.* § 1102. He was also facing one count of Strangulation, one count of Unlawful Imprisonment in the Second Degree, one count of Assault in the Third Degree, one count of Criminal Trespass in the First Degree and one count of Home Invasion. As part of the plea deal the State agreed to enter *nolle prosequis* on the remaining charges and recommend a sentence of 52 years incarceration suspended after serving 30 years, 15

of which were minimum mandatory followed by probation. Additionally the parties agreed that Lockett was eligible to be sentenced as an habitual offender but that they would not be seeking such a sentence. The Court agreed with the recommended sentence. Lockett was also given credit for time served. Had Lockett gone to trial and been found guilty as charged he faced a minimum sentence of 55 years to life in prison as an habitual offender if convicted on all counts. Lockett filed an appeal to the State Supreme Court and his attorney filed to withdraw on October 12, 2018. The Supreme Court affirmed Lockett's conviction and sentence.¹ Lockett filed the pending *pro se* motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on October 22, 2018 while his direct appeal before the Supreme Court was still pending. Consequently his postconviction motion was stayed until after the conclusion of his direct appeal.

FACTS

The following are the facts as outlined by the State in the Reply to Lockett's motion.

The charges arose after the defendant restrained, beat and attempted to rape Tiffany Winchester (the "victim") in the presence of her children. A friend of the victim's (the "witness") reported that the defendant, who was her ex-boyfriend showed up unannounced at a gathering on March 29, 2018. While he was with the witness, The defendant stated that he was going to "pop an E pill" or ecstasy pill. The witness went to the apartment in Dover, Delaware she shared with the victim and the defendant followed her inside. The witness stated that the defendant's behavior seemed odd and that he implied to her that he wanted to have sexual intercourse. The witness and the defendant left the apartment and returned to the gathering. The

¹ *Lockett v. State*, Del. Supr., 519, 2018, Jan. 28, 2019.

victim reported to the police that she went to sleep early that day and did not go to the gathering with her roommate. The victim told police that she awoke to the defendant on top of her and naked. The defendant attempted to pull her pants off and when she resisted he punched her in the face approximately six times. During the struggle, the defendant told the victim that “you’re going to give me this pussy,” squeezed her neck impeding her breathing and slammed her on the floor. The victim was able to reach the bedroom door but the defendant held it closed blocking her egress. The victim’s minor child attempted to push her way into the victim’s room to assist her mother. The attack ended when the witness came back to the apartment, entered the room and found the defendant completely naked and restraining the victim. The defendant stated to the witness: “I’m sorry. I don’t know. I don’t know. I’m binked up.” The witness then watched the defendant release the victim and eventually flee from the apartment by jumping off of a third floor balcony.²

LOCKETT’S CONTENTIONS

In Lockett’s Motion for Postconviction Relief he raises the following grounds for relief:

- Ground one: Coerced confession or guilty plea.
By being under the influence of marijuana & a dipper cigaret (sic) (embalming fluid) that if I didn’t agree to the State’s offer at that moment I was going to die in prison.

- Ground two: To subpoena witnesses.
My witness would have been the same individual which was my victim (Miss Tiffany Winchester) for she would of

² *State v. Lockett*, Del. Super., ID no. 180301970, D.I. 33.

spoke of the embalming fluid cigaret (sic) I had induced and the argument that insued (sic) of her having an abortion with my child.

Ground three: Ineffective Assistance of Counsel.
Fully aware that I've been in and out of mental institutions, no family support, under the influence of drug prescribed and self medicated stating that he would discuss facts and assess strengths & weaknesses and doing no more than having me agree to a life sentence.

DISCUSSION

Under Delaware law, this Court must first determine whether Lockett has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of his postconviction relief claim.³ This is Lockett'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 Lockett'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. Each of Lockett's grounds for relief are based on ineffective assistance of counsel; therefore, he has alleged cause for his failure to have raised the claims earlier.

At this point, Rule 61(i)(3) does not bar relief as to Lockett's grounds for

³ *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

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, Lockett must meet the two-prong test of *Strickland v. Washington*.⁴ 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.⁵ 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.⁶ 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.⁷ 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.⁸ This standard is highly demanding.⁹

⁴ 466 U.S. 668 (1984).

⁵ *Id.* at 687.

⁶ *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997)(citing *Albury v. State*, 551 A.2d 53, 60 (Del. 1988))(citations omitted).

⁷ *See e.g., Outten v. State*, 720 A.2d 547, 557 (Del. 1998) (citing *Boughner v. State*, 1995 WL 466465 at *1 (Del. Supr.)).

⁸ *Albury*, 551 A.2d at 59 (citing *Strickland*, 466 U.S. at 689).

⁹ *Flamer v. State*, 585 A.2d 736, 754 (Del. 1990)(quoting *Kimmelman v. Morrison*, 477 U.S. (continued...))

Strickland mandates that, when viewing counsel's representation, this Court must endeavor to “eliminate the distorting effects of hindsight.”¹⁰

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

Lockett was facing the possibility of a minimum mandatory sentence of 55 years to life in prison had he been convicted. The sentence and plea were very reasonable under all the circumstances, especially in light of the overwhelming eyewitness evidence against him. Prior to the entry of the plea, Lockett and his attorney discussed the case. The plea bargain was clearly advantageous to Lockett. Counsel was successful in negotiating a beneficial plea bargain with the State. Counsel’s representation was certainly well within the range required by *Strickland*. Additionally, when Lockett entered his Robinson 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.¹¹ Consequently, Lockett has utterly failed to establish that his counsel’s representation was ineffective under the *Strickland* test.

⁹(...continued)
365, 383 (1986)).

¹⁰ *Strickland*, 466 U.S. at 689.

¹¹ *Mapp v. State*, 1994 WL 91264, at *2 (Del.Supr.)(citing *Sullivan v. State*, 636 A.2d 931, 937-938 (Del. 1994)).

Even assuming, *arguendo*, that counsel's representation of Lockett was somehow deficient, Lockett 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.¹² In an attempt to show prejudice, Lockett simply asserts that his counsel was ineffective. His statements are insufficient to establish prejudice, particularly in light of the overwhelming evidence against him. Therefore, I find Lockett's grounds for relief are meritless.

To the extent that Lockett 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.¹³ At the guilty-plea hearing, the Court asked Lockett whether he understood the nature of the charges, the consequences of his Robinson plea, and whether he was voluntarily entering the Robinson plea. The Court asked Lockett if he understood he would waive his constitutional rights if he entered the Robinson plea including the right to suppress evidence; 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 Lockett if he had discussed the his plea and its consequences fully with his attorney. The Court asked

¹² *Larson v. State*, 1995 WL 389718, at *2 (Del. Supr.)(citing *Younger*, 580 A.2d 552, 556 (Del. 1990)).

¹³ *Godinez v. Moran*, 509 U.S. 389, 400 (1993).

Lockett if he was entering into the plea because the State had sufficient evidence to convict him as charged. The Court also asked Lockett if he was satisfied with this counsel's representation. Lockett answered each of these questions affirmatively.¹⁴ I find counsel's representations far more credible than Lockett's self-serving, vague allegations.

Furthermore, prior to entering his Robinson plea, Lockett signed a Guilty Plea Form and Plea Agreement in his own handwriting. Lockett'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. Lockett is bound by the statements he made on the signed Guilty Plea Form, unless he proves otherwise by clear and convincing evidence.¹⁵ I confidently find that Lockett entered his Robinson plea knowingly and voluntarily and that Lockett's grounds for relief are completely meritless.

¹⁴ *State v. Lockett*, Del. Super., ID No. 1803019970 (Sept. 12, 2018) Tr. at 2-17.

¹⁵ *Sommerville*, 703 A.2d at 632.

CONCLUSION

I find that Lockett's counsel represented him in a competent and effective manner and that Lockett has failed to demonstrate any prejudice stemming from the representation. I also find that Lockett's Robinson plea was entered knowingly and voluntarily. I recommend that the Court *deny* Lockett's motion for postconviction relief as procedurally barred and completely meritless pursuant to Superior Court Criminal Rule 61(i)(3).

/s/ Andrea M. Freud
Commissioner

AMF/dsc
oc: Prothonotary