IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ID No. 1602012206
	)	
	)	
	)	
ROBERT L. SMITH,	)	
	)	
Defendant.	)	

Submitted: September 25, 2023
Decided: December 31, 2023

COMMISSIONER'S REPORT AND RECOMMENDATION THAT DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF SHOULD BE DENIED.

Andrew J. Vella, Esquire, Chief of Appeals, Delaware Department of Justice, Wilmington, Delaware, Attorney for the State.

Edward C. Gill, Esquire, Law Offices of Edward C. Gill, P.A., Wilmington, Delaware, Postconviction counsel for Defendant.

SALOMONE, Commissioner

This 31st day of December 2023, upon consideration of Defendant's Amended Motion for Postconviction Relief, it appears to the Court that:

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On February 18, 2016, Wilmington Police officers responded to a report of a stabbing. Upon arrival at 2305 Tatnall Street, officers found Igna Coffee Young unresponsive and suffering from multiple stab wounds. She was pronounced dead at the scene. Ms. Young's daughter informed police that she arrived home to her father, Defendant Robert L. Smith ("Smith" or "the Defendant"), sitting on the steps of the apartment with her mother's phone in hand. The daughter told the police that prior to her leaving the apartment, Smith had been inside the apartment with Ms. Young. When the daughter returned home, Smith informed her that Ms. Young was dead inside and that he was locked out of the apartment. While his daughter unlocked the residence to find her mother fatally wounded, Smith retrieved a set of keys and fled the scene in his daughter's car. Delaware State Police apprehended Smith and took him into custody shortly thereafter when he crashed the vehicle during pursuit.

On May 23, 2016, a grand jury indicted Smith for Murder First Degree, Possession of a Deadly Weapon During the Commission of a Felony ("PDWDCF"),

Disregarding a Police Officer's Signal, and Resisting Arrest.[1] On August 30, 2017, following plea negotiations between the parties, Smith plead Guilty but Mentally Ill ("GBMI") to Murder First Degree and PDWDCF.[2]

Following the plea colloquy, but prior to sentencing, Smith submitted a letter to defense counsel, dated October 9, 2017, requesting to have his plea withdrawn on the basis that there was a defect with his indictment.[3] On October 19, 2017, defense counsel met with Smith to discuss his request.[4] Smith communicated to defense counsel that he believed the indictment was defective because the victim's name was incorrectly spelled. Defense counsel advised that they would research whether a typographical error was a valid basis to withdraw a guilty plea under Superior Court Criminal Rule 32 ("Rule 32"). After researching the issue, defense counsel advised Smith that it appeared unlikely that he had a valid basis for withdrawal.[5] Smith

[1] *State v. Robert L. Smith*, ID No. 1602012206, Superior Court Criminal Docket Index No. 2 (hereinafter "D.I. __").

[2] D.I. 24. After the plea colloquy, trial counsel received a letter from Smith, dated August 30, 2017, in which Smith expressed concern based upon his review of the plea agreement that he had pleaded guilty to two counts of PDWDCF instead on one. D.I. 59. Appendix to Affidavit of Defense Counsel in Response to Rule 61 Motion for Post-Conviction Relief, at 10 (hereinafter "D.I. 59 Appendix at ___"). Counsel met with Smith on September 15, 2017 and clarified with him that he had in fact pleaded GBMI to one count of PDWDCF. D.I. 59 at 8. At no time during this meeting did Smith express a desire to withdraw his guilty plea. *Id.*

[3] D.I. 59 Appendix at 33.

[4] D.I. 59 at 8.

[5] *Id.*

proceeded with sentencing pursuant to the plea agreement.[6] On November 2, 2017, the Court sentenced Smith to life imprisonment as to Murder First Degree.[7] As to the PDWDCF charge, Smith was sentenced to 25 years at Level V, followed by 6 months at Level IV at the discretion of the Department of Corrections.[8]

On November 16, 2017, the Defendant filed a direct appeal to the Delaware Supreme Court.[9] Shortly thereafter, on November 27, 2017, Smith filed a *pro se* Motion for Postconviction Relief pursuant to Delaware Superior Court Criminal Rule 61, seeking to withdraw his guilty plea and raising claims of ineffective assistance of counsel.[10] The Court responded to Smith by Letter Order on December 6, 2017, informing him that the Motion for Postconviction Relief would be deferred until the Delaware Supreme Court issued a decision on his appeal.[11] On May 17, 2018, the Delaware Supreme Court affirmed the Superior Court's judgment.[12]

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[6] D.I. 25.

[7] *Id.*

[8] *Id.*

[9] D.I. 27.

[10] D.I. 28.

[11] D.I. 32.

[12] D.I. 40. Smith's appellate counsel filed a brief and a motion to withdraw under Supreme Court Rule 26(c). *Smith v. State of Delaware*, 187 A.3d 550 (Table) (Del. May 17, 2018). Although counsel found no appealable issues, he advised Smith of his right to identify any points he wished the Court to consider on appeal. *Id.* Smith did not raise any issues before the Supreme Court. *Id.*

On August 29, 2018, the Court requested supplemental information from Smith with respect to his *pro se* Motion for Postconviction Relief and ordered that such information be provided on or before November 26, 2018.[13] On November 16, 2018, Smith requested an extension of time to respond to the Court's August 29th Order until he retained legal counsel to assist him with his Motion for Postconviction Relief.[14] On January 7, 2019, the Court granted Defendant's motion for an extension of time and ordered that the supplemental information be provided no later than May 6, 2019.[15]

On April 30, 2019, with the assistance of newly-retained postconviction counsel, Smith filed an Amended Motion for Postconviction Relief (the "Amended Motion").[16] On May 15, 2019, the Amended Motion was referred to a Commissioner for Report and Recommendation.[17]

On August 29, 2019, the Court issued a briefing schedule, which was subsequently amended on September 20, 2019.[18] On November 15, 2019, trial

[13] D.I. 41.

[14] D.I. 42.

[15] D.I. 43.

[16] D.I. 47.

[17] D.I. 48.

[18] D.I. 54, 58.

counsel filed a joint affidavit in response to the factual allegations of ineffective assistance of counsel raised in the Amended Motion, denying all three grounds.[19] On December 16, 2019, the State filed a legal memorandum in response to the Amended Motion.[20] On January 14, 2020, Smith filed a reply memorandum in support of the Amended Motion requesting an evidentiary hearing with respect to the disputed factual issues.[21]

On September 24, 2020, the Court granted Smith's request for an evidentiary hearing and directed trial counsel to provide the Court with copies of (i) any communications in which Defendant specifically requested to proceed to trial or withdraw his plea and (ii) any correspondence or memoranda in which trial counsel analyzed the evidence and assessed the risks associated with trial and/or explained the benefits of a plea agreement to the Defendant.[22] An evidentiary hearing was held

[19] D.I. 59. Andrew Meyers, Esquire, and Dean C. DelCollo, Esquire, jointly served as trial counsel to the Defendant.

[20] D.I. 61.

[21] D.I. 62.

[22] D.I. 67. On March 12, 2020, the Governor declared a State of Emergency for the State of Delaware due to the public health threat posed by COVID-19, which State of Emergency was extended numerous times through July 13, 2021. The Chief Justice of the Delaware Supreme Court, in turn, declared a judicial emergency that went into effect on March 16, 2020, which judicial emergency was also extended numerous times until it was lifted on July 13, 2021. No in person hearings of this nature were permitted during the judicial emergency, thus accounting for the delay in scheduling the evidentiary hearing.

on September 16, 2021 at which time only the Defendant testified.[23] At the same hearing, the Court directed the parties to address the Delaware Supreme Court decision in *Taylor v. State*.[24]

A second evidentiary hearing was held on October 25, 2021, at which time the State called trial counsel, Dean DelCollo, Esquire, to testify regarding his communications with the Defendant prior to his taking the plea.[25] Upon conclusion of the hearing, the Court directed the State to specifically address the language set forth in 11 *Del. C.* § 408(a) ("Section 408") in its supplemental briefing regarding the *Taylor* decision.[26] On October 26, 2021, Smith provided the Court with its supplemental briefing in support of the Amended Motion.[27] The State filed its supplemental brief on November 18, 2021 and postconviction counsel filed a reply on behalf of the Defendant on December 8, 2021.[28]

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[23] D.I. 70. Prior to the evidentiary hearing, certain email correspondence between trial counsel and the Defendant were provided to postconviction counsel in response to the Court's Order of September 24, 2020, but had not been provided to the State or the Court. Postconviction counsel was directed to provide copies to the State and the Court by September 17, 2021. Although originally scheduled to appear, neither of the State's witnesses (i.e. trial counsel) testified at that hearing since the documents had not been produced to the State prior to the hearing and counsel was not prepared to question the witnesses regarding the email correspondence.

[24] 213 A.3d 560 (Del. 2019).

[25] D.I. 74.

[26] *Id.*

[27] D.I. 73.

[28] D.I. 77-81. Transcripts from both hearings were requested and made part of the record in the spring of 2022.

After a review of the record, the Court determined that an additional evidentiary hearing needed to be scheduled to obtain the direct testimony of the Defendant's other trial counsel, Andrew Meyers, Esquire, in order to complete the record.[29] That hearing was held on June 29, 2023.[30] The State requested to supplement its previous response on the issue of Section 408, which the Court granted.[31] The State filed its final supplemental response on September 1, 2023 and the Defendant filed a final response on September 25, 2023.[32]

CLAIMS FOR POSTCONVICTION RELIEF

Amended Motion

In the Amended Motion, Smith raises three claims of ineffective assistance of counsel which can be fairly summarized as follows:

> **Ground One**: Trial counsel was ineffective because they did not permit the Defendant to make the decision as to whether to proceed to trial or take a plea.

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[29] D.I. 82.

[30] D.I. 85. Setting a date and time for the final evidentiary hearing proved difficult as trial counsel had limited availability due to work-related conflicts and postconviction counsel had some health issues. In addition, the Deputy Attorney General who had been handling the postconviction case on behalf of the State was no longer with the office and the matter needed to be reassigned internally. *See* D.I. 83-84.

[31] *Id.; see also* Transcript of evidentiary hearing held on June 29, 2023 (hereinafter "D.I. 86 at __") at 52-58.

[32] D.I. at 87-88.

> **Ground Two**: Trial counsel was ineffective for failing to file a motion to withdraw Defendant's guilty plea after Smith requested they do so.
>
> **Ground Three:** Trial counsel was ineffective for failing to negotiate and obtain any benefit for the Defendant through the plea bargain.

Each of these claims and trial counsels' position with respect thereto is discussed in more detail below.

Ground One

In ground one, Smith asserts that trial counsel was ineffective because they did not allow Smith to make the strategic decision of whether to go to trial or accept a plea.[33] Smith claims that he repeatedly told trial counsel that he did not wish to accept the plea, but rather, wished to go to trial and claim self-defense, a defense which Smith claims was supported by the factual record.[34] In support of this claim, Smith points to the numerous meetings he had with trial counsel prior to taking a plea and his handwritten journal entries that documented those discussions.[35] Those entries reflect that on July 25, 2017 and August 17, 2017 Smith made a specific request to go to trial when speaking with counsel.[36]

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[33] D.I. 47 at 3.

[34] *Id.*

[35] D.I. 70. *See* Joint Exhibit Index from evidentiary hearing held on September 16, 2021 (hereinafter "J.E. 1"), at 84-87.

[36] J.E. 1, at 86.

Trial counsel denies this claim of ineffective assistance of counsel and states that at no time did they bar Smith's ability to demand a trial.[37] In support thereof, counsel states that they met with the Defendant no less than twenty-six (26) times while he was incarcerated at the Howard R. Young Correctional Institution as well as during his scheduled court appearances.[38] And, at these meetings, counsel asserts they discussed with the Defendant in detail the benefits and drawbacks of proceeding to trial versus resolving the matter through a plea bargain.[39] Counsel also claims to have explained the significant minimum mandatory sentence the Defendant could receive if convicted of all counts of the indictment and investigated and discussed with the Defendant all possible defenses, including self-defense and extreme emotional distress.[40] To that end, trial counsel conveyed to the Defendant their view of the inherent weakness of proceeding to trial on a theory of self-defense, given that Smith never claimed the victim threatened his life prior to her death in a way which would justify the use of deadly force.[41]

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[37] D.I. 59 at 4.

[38] D.I. 59 at 3.

[39] D.I. 59 at 3; *see also* D.I. 86 at 42-44.

[40] D.I. 59 at 3, 5; D.I. at 8-10. The Defendant's journal also reflects that these issues were discussed. J.E. 1, at 86 (see "8-17-17" entry).

[41] D.I. 59 at 5. Smith acknowledged that leading up to the incident, the victim was merely pushing, spitting and slapping him in the face which would not give rise to the use of deadly force. *Id.*

Similarly, trial counsel claims they met with Smith on two occasions in August 2017 to finalize defense strategy and discuss the viability of possible defenses, including arguing in Smith's defense that due to extreme emotional distress the killing was a reckless one rather than an intentional one.[42] Trial counsel further explained that, if successful, an extreme emotional distress defense could result in Smith being convicted of Manslaughter rather than Murder First Degree, but that there was no guarantee that a jury would return such a verdict.[43] Moreover, trial counsel explained that because of his prior criminal history, Smith was eligible to be sentenced as a habitual offender.[44] And, even if he were successful in his defense of extreme emotional distress and was convicted of Manslaughter and PDWDCF, the minimum mandatory sentence if declared a habitual offender would be 50 years up to life in prison.[45] Trial counsel claims that while they shared this analysis with Smith, it was ultimately his decision whether to accept a plea or demand a trial.[46]

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[42] D.I. 59 at 5-6.

[43] D.I. 59 at 6; Transcript of evidentiary hearing held on September 16, 2021 (hereinafter "D.I. 77 at __") at 23-24.

[44] *Id.*; *see also* J.E. 1, at 86 (see "8-17-17" entry); D.I. 77 at 23-24 (testimony of Smith acknowledging that trial counsel explained effects on sentencing from being declared a habitual offender).

[45] D.I. 59 at 6.

[46] *Id.*; see also D.I. 86 at 42-43.

Counsel acknowledges that prior to tendering his plea, Smith had reservations and concerns regarding how to move forward with his case.[47] However, when counsel met with Smith a third time in August 2017, he advised trial counsel that he wished to accept the States's offer to plead Guilty But Mentally Ill to Murder First Degree and PDWDCF.[48] Counsel claims that Smith understood that there was little likelihood of a better outcome by demanding a trial and that he would receive better access to quality psychiatric treatment with such a plea, treatment he very much wanted.[49] Counsel also advised that Smith wanted to take responsibility for his actions and did not want to subject the victim's family, which included his own daughters, to a trial.[50]

Ground Two

In ground two, Smith asserts that trial counsel was ineffective for failing to file a motion to withdraw his guilty plea when requested to do so. After entering his plea on August 30, 2017, Smith wrote a letter to trial counsel, dated October 9, 2017, requesting to withdraw his plea and relayed that same request in person to trial counsel on October 19, 2017.[51] On October 25, 2017, trial counsel informed Smith

[47] D.I. 59 at 5.

[48] D.I. 59 at 6-7; *see also* J.E. 1, at 86 (see "8-23-17" entry).

[49] D.I. 59 at 7; D.I. 74 at 19-20, 40; D.I. 86 at 40, 45.

[50] D.I. 59 at 7.

[51] D.I. 47 at 3; *see also* J.E. 1, at 87 (see "10-19-17" entry).

that there was no legal basis to withdraw his plea.[52] Smith asserts that trial counsels' refusal to withdraw the plea constitutes ineffective assistance of counsel.[53]

Trial counsel denies this claim of ineffective assistance of counsel and reiterates that Smith ultimately elected to accept the plea offer extended by the State after weighing the pros and cons of accepting a plea versus proceeding to trial.[54] Moreover, they argue that the Court engaged in a full colloquy and found that the plea was made knowingly, intelligently, and voluntarily.[55]

Counsel acknowledges receiving a letter from Smith after his plea hearing, dated August 30, 2017, in which he expressed concern that he had pleaded guilty to two counts of PDWDCF.[56] Counsel met with Smith on September 15, 2017 and clarified that he had only pleaded guilty but mentally ill to one count of PDWDCF.[57] Counsel asserts that at no time during this meeting did Smith express a desire to withdraw his guilty plea.[58]

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[52] D.I. 47 at 3; *see also* J.E. 1, at 87 (see "10-25-17" entry).

[53] D.I. 47 at 3.

[54] D.I. 59 at 7.

[55] D.I. 59 at 7.

[56] D.I. 59 at 8.

[57] D.I. 59 at 8; D.I. 86 at 23-24.

[58] D.I. 59 at 8; D.I. 86 at 23-24.

Counsel likewise acknowledges receiving a second letter from Smith, dated October 9, 2017, in which he expressed a desire to withdraw his guilty plea on the basis that the indictment was defective.[59] Counsel met with Smith on October 19, 2017 to discuss the letter and the Defendant explained that he believed there was a defect in the indictment because the victim's name was spelled incorrectly.[60] Counsel states that they informed the Defendant that they did not believe that this was a valid basis to withdraw his plea pursuant to Rule 32 but conducted research and confirmed the same.[61] Counsel claims that upon being advised of the results of their research, Smith did not thereafter raise the issue of filing a motion to withdraw his guilty plea and proceeded with the scheduled sentencing.[62]

Ground Three

And finally, in ground three, Smith asserts that the plea negotiated by trial counsel on his behalf provided him with no benefit because he received the minimum mandatory sentence of life imprisonment for his conviction for Murder First Degree.[63] Defendant claims that life imprisonment was the same penalty he would

[59] D.I. 59 at 8; D.I. 86 at 25-27.

[60] D.I. 59 at 8; D.I. 86 at 25-27. In the indictment, the victim's name was spelled "Inga Coffe" instead of "Inga Coffee." *Id.*

[61] D.I. 59 at 8; D.I. 86 at 25-27.

[62] D.I. 59 at 8-9; D.I. 86 at 27-28.

[63] D.I. 73 at 14.

have received had he gone to trial and lost because the death penalty had been found to be unconstitutional by the Delaware Supreme Court pursuant to *Rauf v. State*[64] during the pendency of his case. Accordingly, by the time Smith's case moved forward, he had no exposure to the death penalty.[65]

Moreover, Smith states that one of the physicians who interviewed him opined that, at the time of the killing, he was acting under extreme emotional distress within the meaning of 11 *Del C.* § 641.[66] Thus, according to Smith, if this testimony were to be believed by the trier of fact, his conviction for Murder First Degree would have been reduced to Manslaughter.[67]

Citing the Delaware Supreme Court decision in *Cooke v. State*[68] and the United States Supreme Court decision in *McCoy v. Louisiana*,[69] Smith asserts that he has an absolute right to present any viable defense he chooses, and that decision should not be taken away by trial counsel.[70] Here, the Defendant claims that trial counsels' insistence that he take a plea, which provided him with no benefit and

[64] 146 A.3d 430 (Del. 2016).

[65] D.I. 47.

[66] D.I. 47 at 3.

[67] D.I. 47 at 3.

[68] 977 A.2d 803 (Del. 2009).

[69] 138 S. Ct 1500 (2018).

[70] D.I. 47 at 3.

prevented him from asserting claims of self-defense and extreme emotional distress, constituted ineffective assistance of counsel.[71]

Trial counsel also denies this third claim of ineffective assistance of counsel and reiterates that the decision to plead GBMI to Murder First Degree and PDWDCF was solely Smith's decision following consultation with counsel.[72] As in ground one, counsel claims that Smith wanted to take responsibility for his actions and avoid the stress and trauma that a trial would impose on his family.[73] In addition, trial counsel rejects the notion that Smith received no benefit from his plea because, by pleading GBMI to the charges, Smith was sent to the Delaware Psychiatric Center for mental health treatment for a period of over two years.[74] This treatment, according to trial counsel, was of great importance to the Defendant.[75]

Additionally, counsel asserts that the Defendant received the benefit of having the evaluations of two mental health professionals being made a part of the record unopposed by the State.[76] Counsel contends that if, in the future, Smith were to

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[71] D.I. 47 at 3-4.

[72] D.I. 59 at 9.

[73] D.I. 59 at 9-10; D.I. 86 at 47 (trial counsel stating that the Defendant would have the benefit of having taken responsibility for his actions were he to seek a commutation in the future).

[74] D.I. 59 at 9.

[75] Transcript of evidentiary hearing held on October 25, 2021 (hereinafter D.I. 74 at __") at 19.

[76] D.I. 59 at 10; D.I. 77 at 26-27 (Smith testifying that counsel discussed the benefits of taking a plea with respect to a possible commutation in the future).

attempt to have his sentence commuted, it is beneficial to Smith that there is no report from the State's expert contradicting his position that he was suffering from a mental illness at the time of the offense which may increase the likelihood of the relief being granted.[77]

Smith, on the other hand, contends that if he had been found guilty but mentally ill at trial or acquitted based on self-defense, he would still be able to get the psychiatric treatment he received so to contend that he garnered that benefit by virtue of the plea is untrue.[78] Likewise, Smith argues that the possibility of a viable defense of extreme emotional distress supported by the testimony and evaluations of two mental health professionals provided some incentive for counsel to move forward to trial rather than simply acquiesce to a life sentence for the Defendant.[79]

Postconviction Claim Set Forth in Supplemental Briefing

In his supplemental briefing filed October 26, 2021, Smith discusses the application of *Taylor v. State* to the case at bar and argues that the Court failed to meet the statutory requirements of Section 408 in accepting Smith's plea of GBMI to Murder First Degree and PDWDCF.[80]

[77] D.I. 59 at 10.

[78] D.I. 62.

[79] D.I. 62.

[80] D.I. 73.

Section 408 outlines the procedures a Court must follow in finding a defendant guilty but mentally ill and provides as follows:

> (a) Where a defendant's defense is based upon allegations which, if true, would be grounds for a verdict of "guilty, but mentally ill" or the defendant desires to enter a plea to that effect, no finding of "guilty, but mentally ill" shall be rendered until the trier of fact has examined all appropriate reports (including the presentence investigation); has held a hearing on the sole issue of the defendant's mental illness, at which either party may present evidence; and is satisfied that the defendant did in fact have a mental illness at the time of the offense to which the plea is entered. Where the trier of fact, after such hearing, is not satisfied that the defendant had a mental illness at the time of the offense, or determines that the facts do not support a "guilty, but mentally ill" plea, the trier of fact shall strike such plea, or permit such plea to be withdrawn by the defendant. A defendant whose plea is not accepted by the trier of fact shall be entitled to a jury trial, except that if a defendant subsequently waives the right to a jury trial, the judge who presided at the hearing on mental illness shall not preside at the trial.[81]

The Defendant argues that Section 408 required the Court to review all appropriate reports, including the presentence report, prior to accepting Smith's plea of GBMI to Murder First Degree and PDWDCF.[82] Here, the Court accepted Smith's guilty plea after conducting the plea colloquy but prior to receiving or reviewing the

[81] 11 *Del. C.* § 408; see *Daniels v. State*, 538 A.2d 1104 (Del. 1988) (holding that Section 408(a) establishes a procedure for the trial court to determine if a factual basis exists for the entry of a plea of guilty but mentally ill.)

[82] D.I. 73.

presentence report.[83] Smith argues that this procedural defect in the Court's acceptance of Smith's plea should alone invalidate his plea and requires that the matter be set for a new trial.[84]

Smith's interpretation of the requirements of Section 408 is incorrect. There was no procedural defect in the Court's acceptance of Smith's plea. As explained in *Taylor* and recently affirmed by the Delaware Supreme Court in *Lindsey v. State*,[85] the Court need not review the presentence report and related documents prior to accepting a defendant's guilty but mentally ill plea.[86] Rather, those documents must be reviewed prior to adjudicating the defendant guilty but mentally ill.[87] In *Lindsey*, the Supreme Court reiterated the guidance it offered in *Taylor* with respect to Section 408.

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[83] D.I. 73.; J.E. 1, at 27. The Court did have an opportunity to review the expert reports and plea forms prior to the plea colloquy. D.I. 74 at 24.

[84] D.I. 73.

[85] 2023 WL 8230271, slip op. (Del. Supr.), affirming *State v. Shah*, 2023 WL 2770268 (Del. Super Ct.).

[86] *See State v. Shah*, 2023 WL 2770268, at *4 (Del. Super Ct.) (explaining that "the Defendant's arguments concerning the Court's alleged procedural shortcomings conflate 'accepting he plea' with the Court's adjudication of the Defendant being mentally ill at the time of the crime. The Court's acceptance of the plea, and the Court's adjudication of the Defendant being mentally ill at the time of the crime, are two separate procedures. The requirement that the Court hold a hearing where the sole issue is the defendant's mental illness is only necessary before the adjudication of the Defendant's mental illness—not before the acceptance of the plea").

[87] *Id.; see also Kane v. State*, 2020 WL2530213, at*3 (Del. 2020) (affirming the trial court's acceptance of a plea of guilty but mentally ill without a presentence report where the parties requested immediate sentencing and did not object to the lack of such report).

> For future guidance, we interpret [11 *Del. C.* § 408] as follows. A defendant can plead guilty but mentally ill to a crime, and the court can accept the plea in the same hearing after finding under Superior Court Criminal Rule 11 that the defendant's plea is made knowingly, intelligently, and voluntarily. But, the court should defer adjudicating the defendant guilty but mentally ill of the crime until after it holds a hearing where the sole issue is the defendant's mental illness. As part of the evidence at the second mental illness hearing, the court should consider the presentence investigation. After the second hearing, if the court is satisfied that the requirements of § 408(a) have been met, the court should adjudicate the defendant guilty but mentally ill of the offense and impose sentence. If the statutory requirements are not met, the court should strike the plea or allow the defendant to withdraw it.[88]

In light of this clear and unambiguous precedent from the Delaware Supreme Court, Smith's claim that the Court failed to meet the statutory requirements of Section 408 in accepting Smith's plea of guilty but mentally ill to Murder First Degree and PDWDCF prior to reviewing the presentence report is wholly without merit. It is, therefore, summarily dismissed.

APPLICABLE LAW FOR POST CONVICTION RELIEF

Rule 61 and Procedural Bars to Relief

Superior Court Criminal Rule 61 ("Rule 61") governs the procedures by which an incarcerated individual may seek to have his conviction set aside on the

[88] *Lindsey*, 2023 WL 8230271 n. 25 (*citing Taylor*, 213 A.3d at 569 n. 45).

ground that the court lacked jurisdiction or any other ground that is a sufficient factual and legal basis for a collateral attack upon the conviction.[89] That is, it is a means by which the court may correct Constitutional infirmities in a conviction or sentence.[90] "Rule 61 is intended to correct errors in the trial process, not allow defendants unlimited opportunities to relitigate their convictions."[91]

Given that intent, before considering the merits of any claims for postconviction relief, the Court must first determine whether there are any procedural bars to the Amended Motion.[92] Rule 61(i) establishes four procedural bars to postconviction relief.[93] Rule 61(i)(1) prohibits a motion for postconviction relief from being filed "more than one year after the judgement of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court."[94]

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[89] Super. Ct. Crim. R. 61(a)(1).

[90] *Harris v. State*, 410 A.2d 500 (Del. 1970).

[91] *Ploof v. State*, 75 A.3d 811,820 (Del. 2013).

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

[93] Super. Ct. Crim. R. 61(i)(1)-(4).

[94] Super. Ct. Crim. R. 61(i)(1).

Rule 61(i)(2) bars successive motions for postconviction relief unless certain conditions are met.[95] Pursuant to Rule 61(i)(3) and (4), any ground for relief that was not previously raised is deemed waived, and any claims that were formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, are thereafter barred.[96]

The foregoing bars to relief do not apply to a claim that the court lacked jurisdiction or to a claim that satisfies the pleading requirements of Rule 61(d)(2)(i) or (d)(2)(ii).[97] Rule 61(d)(2)(i) requires that a defendant "pleads with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted."[98] Rule 61(d)(2)(ii), in turn, requires that a defendant "pleads with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the

[95] Rule 61(i)(2) bars successive or subsequent motions for postconviction relief unless the movant is able to "pled with particularity" that (i) "new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted" or (ii) "a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant's case and renders the conviction or death sentence invalid." Super. Ct. Crim. R. 61(d)(2).

[96] *See* Super. Ct. Crim. R. 61(i)(5) and (d)(2)(i), (ii).

[97] Super. Ct. Crim. R. 61(i)(5).

[98] Super. Ct. Crim. R. 61(d)(2)(i).

movant's case and renders the conviction or death sentence invalid."[99] However, ineffective assistance of counsel claims cannot be raised at any earlier stage in the proceedings and are properly presented by way of a motion for postconviction relief.[100]

This is Defendant's first motion for postconviction relief and it was timely filed.[101] No procedural bars prevent the Court from reviewing the claims set forth in the Amended Motion on the merits. The State concedes the same with respect to the claims set forth in the Amended Motion.[102]

LEGAL ANALYSIS OF POSTCONVICTION CLAIMS

In order to prevail on a claim of ineffective assistance of counsel, the defendant must satisfy the two-prong standard set forth in *Strickland v. Washington.*[103] This test requires the defendant to show: (a) counsel's deficient

[99] Super. Ct. Crim. R. 61(d)(2)(ii).

[100] *Sabb v. State*, 2021 WL 2229631, at *1 (Del. May 28, 2021); *Green v. State*, 238 A.3d 160, 187-188 (Del. 2020); *Whittle v. State*, 2016 WL 2585904, at *3 (Del. Apr. 28, 2016); *State v. Evan-Mayes*, 2016 WL 4502303, at *2 (Del. Super. Aug. 25, 2016).

[101] *See* Super. Ct. Crim. R. 61(i)(1) (motion must be filed within one year of when conviction becomes final); Super. Ct. Crim. R. 61(m)(2) (If the defendant files a direct appeal, the judgment of conviction becomes final when the mandate is issued).

[102] D.I. 61 at 4. The State argues that, to the extent Smith is raising a freestanding claim that there was a procedural defect in the acceptance of his plea, that claim is procedurally barred and should be dismissed. D.I. 87. Having dismissed the claim on the merits, the Court need not engage in an analysis as to whether the claim is procedurally barred.

[103] *Strickland v. Washington*, 466 U.S. 668 (1984).

performance, *i.e.*, that his attorney's performance fell below "an objective standard of reasonableness,"[104] and (b) prejudice.[105] Failure to prove either prong will render a claim insufficient.[106]

Under the first prong, judicial scrutiny is highly deferential. Courts must ignore the distorting effects of hindsight and proceed with a strong presumption that counsel's conduct was reasonable.[107] The *Strickland* Court explained that when deciding an actual ineffectiveness claim, the court must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.[108]

Under the second prong, in order to establish prejudice, the movant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine the confidence in the outcome."[109] In other words, not every error that conceivably could have influenced the outcome

[104] *Id.* at 688.

[105] *Id.* at 694.

[106] *Id.* at 688.

[107] *Id.* at 689.

[108] *Id.* at 690.

[109] *Id.* at 694.

undermines the reliability of the result of the proceeding.[110] The court must consider the totality of the evidence and must ask if the movant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors.[111] "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result."[112]

In the context of a plea challenge, it is not sufficient for the defendant to claim simply that his counsel was deficient. The defendant must also establish that counsel's actions were so prejudicial that there was a reasonable probability that, but for counsel's deficiencies, the defendant would not have taken a plea but would have insisted on going to trial.[113]

The burden of proving ineffective assistance of counsel is on the defendant.[114] Mere allegations of ineffectiveness will not suffice; instead, a defendant must make

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[110] *Id.* at 693.

[111] *Dale v. State*, 2017 WL 443705, * 2 (Del. 2017); *Strickland v. Washington*, 466 U.S. 668, 695-696 (1984).

[112] *Cooke v. State*, 977 A.2d 803, 840 (Del. 2009) (quoting *Strickland*, 466 U.S. at 686).

[113] *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Hickman v. State*, 1994 WL 590495 (Del.) (applying *Strickland* to guilty pleas).

[114] *Oliver v. State*, 2001 WL 1751246 (Del.).

and substantiate concrete allegations of actual prejudice.[115] With this framework in mind, the Court turns to Smith's claims of ineffective assistance of counsel.

Smith Accepted the Plea Knowingly, Intelligently, and Voluntarily

Smith argues that counsel prohibited him from making "the strategic decision of whether to go to trial… or accept a plea."[116] According to Smith, he made continuous requests to go to trial and pursue a self-defense strategy, but his requests went unheeded by trial counsel.[117] His handwritten timeline, indeed, reflects that at different times Smith expressed a desire to go to trial.

While meeting with defense counsel on July 25, 2017, Smith expressed his desire to proceed to trial and forego the State's plea offer.[118] The following day, defense counsel advised the State that the plea offer was rejected and proceeded to work on Smith's trial strategy.[119] On August 22, 2017, less than a month after expressly rejecting the plea, Smith told counsel he was now "thinking about the

[115] *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

[116] Amended Motion, at 3.

[117] *Id*.

[118] J.E. 1 at 86 (*see* Smith's "7-25-17" entry: "Attorney Dean came to visit me to discuss 'the plea.' We talked for a good while and I told him that I want to go to trial or would take a plea to manslaughter. He just kept talking about the plea 'life etc.'").

[119] D.I 59 at 5. Defense counsel testified that they investigated all plausible defenses for Smith, including self-defense, a mental health defense, and an extreme emotional distress defense. See D.I. 86 at 32-36.

plea."[120] On August 23, 2017, after defense counsel confirmed with the State that the plea was still available, Smith signed the plea agreement and the Truth-in-Sentencing Form. Smith indicated on both the Plea Agreement Form and Truth-in-Sentencing Guilty Plea form that he understood and agreed to the terms of the plea agreement.[121]

The Court held a plea colloquy on August 30, 2017, where Smith further communicated to the Court his acceptance of the plea.[122] Specifically, Smith confirmed that he understood the forms,[123] answered all questions truthfully,[124] was freely and voluntarily entering into the plea,[125] that he was waiving constitutional rights relating to trial and appeals,[126] that he believed that it was in his best interest to accept the plea and forgo trial,[127] and that he was satisfied with his legal

[120] J.E. 1 at 86 (*see* Smith's "8-22-17" entry: "Attorney Dean came to see me (approx. 11:30 am). We talked for awhile and told him that I was thinking about the plea… I told Dean to see if the plea was still on the table."); *see also* Case Activity, Public Defender of the State of Delaware, at 22. ("DCD met with client at HRYCI. Client apparently changed his mind and now wishes to accept GBMI plea.").

[121] *See* D.I. 21.

[122] J.E. 1 at 22 (transcript from the plea hearing held on August 30, 2017).

[123] *Id*. at 10-11.

[124] *Id*. at 19.

[125] *Id*. at 15-16.

[126] *Id*. at 17.

[127] *Id*. at 16-17.

representation.[128] After a thorough plea colloquy, the Court accepted Defendant's plea of guilty but mentally ill to Murder First Degree and PDWDCF.[129]

"[A] defendant's statements to the Superior Court during the guilty plea colloquy are presumed to be truthful."[130] Where the defendant has signed his Truth-in-Sentencing Guilty Plea Forms and has answered at the plea colloquy that he understands the effects of the plea, the defendant must show by clear and convincing evidence that he did not sign those forms knowingly and voluntarily.[131]

Absent clear and convincing evidence to the contrary, Smith is bound by his representations during the guilty plea colloquy and the Truth-in-Sentencing Guilty Plea Form.[132] Smith does not assert the plea colloquy was defective. Nor does he directly contend that his answers were untruthful. Rather, as previously discussed and dismissed, he alleges that the Court's acceptance of the plea prior to a review of the presentence report violated the statutory requirements of Section 408. It did not. The record reflects that Smith, himself, made the decision to enter a plea of guilty

[128] *Id*. at 10-11, 19.

[129] *Id*. at 20.

[130] *Scarborough v. State*, 938 A.2d 644, 650 (Del. 2007).

[131] *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

[132] *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

but mentally ill to Murder First Degree and PDWDCF and he did so knowingly, intelligently, and voluntarily.

Moreover, Smith's veiled assertion that he was coerced by trial counsel into accepting the plea and that his desires to go to trial were ignored by counsel is equally unavailing.[133] When Smith rejected the initial plea offer, counsel diligently advised the State of the same.[134] When Smith later reconsidered, trial counsel advised he would "see if the plea was still on the table,"[135] which he did. Likewise, advising a client of the pros and cons of taking a plea versus going to trial and the likelihood of success with respect thereto is not tantamount to coercion. Rather, it reflects that counsel were "doing their jobs." As such, Smith fails to meet his burden under *Strickland* with respect to ground one of his claims for ineffective assistance of counsel.

[133] D.I. 77 at 26 (testimony of Smith indicating that trial counsel visited him on several occasions and, when discussing the notion of going to trial, counsel said ". . . no, no, no. So I just gave up. Got frustrated. I didn't know the law about who I can complain to about the situation, so I just gave in and said, all right, I'll take the plea."; D.I. 77 at 12 (stating "[w]ell, it was like a situation like good attorney, bad attorney, good attorney. Because one of them treat me all right, and then the other one would treat me kind of, like, nasty."); *see also* D.I. 77 at 17, 20.

[134] D.I. 74 at 9 (trial counsel stating that he advised the State of Smith's rejection of the plea offer.)

[135] J.E. 1, at 86 (*see* Smith's "8-22-17" entry).

Counsels' Performance Was Not Deficient For Failing to Request to Withdraw Smith's Guilty Plea

Smith alleges that defense counsel was ineffective because they "refused to allow" him to withdraw his plea.[136] Relying on the Delaware Supreme Court's decision in *Reed v. State*,[137] Smith argues that upon his request to withdraw his guilty plea, defense counsel should have either filed a motion to withdraw the guilty plea or sought leave to withdraw as counsel.

When considering decision making designations between an attorney and a client-defendant, "the authority to manage the day-to-day conduct of the defense rests with the attorney."[138] "However, certain decisions regarding the exercise or waiver of basic trial and appellate rights are so personal to the defendant 'that they cannot be made for the defendant by a surrogate.'"[139] A defendant holds the ultimate authority to make certain fundamental decisions regarding his case, including deciding whether to plead guilty, waive trial by jury, testify and appeal.[140]

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[136] D.I. 47.

[137] 258 A.3d 807 (Del. 2021).

[138] *Cooke v. State*, 977 A.2d 803, 840 (Del. 2009) (citations omitted).

[139] *Id*. at 841 (citing *Florida v. Nixon*, 543 U.S. 175, 187, 125 S.Ct. 551, 160 L.Ed.2d 565 (2004)).

[140] *Taylor*, 213 A.3d at 567-568 (quoting *Jones v. Barnes*, 463 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983)).

A defendant's fundamental autonomy rights include the absolute and unqualified right to withdraw a plea *before* the court accepts it.[141] At any point after the acceptance of the plea, the defendant's ability to withdraw is no longer unqualified, and withdraw will only be proper upon a showing of a "fair and just reason" under Superior Court Criminal Rule 32(d).[142]

In *Reed*, the defendant sought to withdraw his guilty plea after it was accepted by the Superior Court, but prior to sentencing. Believing that there was no legal basis for withdrawal, counsel refused to file the motion. When defendant made a *pro se* motion to withdraw his guilty plea directly to the Court, the Court declined to consider it because he was represented by counsel. Upon review of the matter, the Supreme Court held that "a criminal defendant's control of the objectives of the representation prior to sentencing requires that counsel either obey an instruction to file a motion to withdraw a guilty plea, or seek leave to withdraw so that the defendant can file the motion with other counsel or pro se."[143] The Supreme Court

[141] *Id.* at 568-69 ("The fair import of the statutory language is that the defendant has an absolute right to withdraw a guilty but mentally ill plea before the plea is accepted by the court. Our interpretation of § 408(a) is consistent with the rules of other courts generally applicable to any plea not yet accepted by the court, the common law, and, as discussed earlier, a defendant's Sixth Amendment autonomy interest in controlling his plea decision. Thus, Taylor did not have to show a "fair or just reason" or any other reason to withdraw a plea that had not been accepted by the court.").

[142] *Reed*, 258 A.3d 807, 823 (Del. 2021).

[143] *Reed*, 258 A.3d 807, 812.

continued, stating that "[e]ven if counsel believes the defendant's motion is contrary to his interest or is without merit, a defendant's decision to attempt to withdraw a plea prior to sentencing cannot be overruled by counsel."[144] The Supreme Court made a point to qualify it's reasoning, noting that "once the plea is accepted by the court, but before sentencing, a defendant's right to withdraw the plea is not unqualified (unlike his decision to plead prior to the court's acceptance of it). Rather, the defendant must satisfy the court that he has a 'fair and just' reason."[145]

Applying the *Strickland* test, the *Reed* Court determined that the first prong for ineffective assistance of counsel was met, as counsel's performance was deficient because they failed to file defendant's motion to withdraw upon his request.[146] When considering the second prong, the Court found it was not in a position to evaluate the merit of Reed's ineffective assistance of counsel claim because certain critical facts had yet to be developed.[147] Accordingly, the Court remanded the case back to the Superior Court for further fact finding.[148]

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[144] *Id.*

[145] *Id.*

[146] *Id.* at 828-29.

[147] *Id.* at 831.

[148] *Id.*

Here, at issue, is the question of whether Smith abandoned his pursuit of the motion to withdraw guilty plea, or, based on their research into its merits, defense counsel refused to file the withdrawal, amounting to circumstances similar to those in *Reed*. The record reflects that, after the plea was accepted but before sentencing, Smith wrote a letter to defense counsel requesting that his guilty plea be withdrawn.[149] The letter stated Smith's reasoning for the request to withdraw his plea was a defect in the indictment, which he later explained was the misspelling of the victim's name.[150] When counsel visited Smith to discuss the withdrawal, Smith revealed that the "real reason" he wished to withdrawal the plea was because he was worried that he would receive limited time and treatment at the state hospital before being sent back to prison.[151] After a review of the applicable law, defense counsel advised Smith that it was unlikely to be a valid basis for withdraw under Rule 32.[152]

[149] J.E. 1, at 52.

[150] *Id.*; D.I. 74 at 26.

[151] D.I. 71. Case Activity, Public Defender of the State of Delaware, at 9 ("10/19/2017" entry); J.E. 1, at 87 (*see* Smith's "10-19-17" entry: "Dean and Andrew came to see me to discuss my letter mail to Andrew about withdrawing my plea. We talked for awhile with them trying to convince me not to withdraw. I said I still wanted to go through with it.") (emphasis in original); D.I. 74 at 26-28.

[152] J.E. 1, at 87 (*see* Smith's "10-25-17" entry: "Dean and Andrew came back to basically say that they can't ethically file my withdrawal of plea because there are no grounds.") (emphasis in original); D.I. 74 at 27-28.

Based on the foregoing facts, the Court finds that counsel's performance was objectively reasonable under the circumstances. Following defense counsel's advice regarding the merits of his motion to withdraw his guilty plea, Smith seemingly made the decision not to pursue the motion further. The record does not reflect any further requests from Smith to pursue the motion to withdrawal his guilty plea.[153] He does not attempt to file a *pro se* motion to withdraw his plea nor does he express any desire to withdraw his plea to the Court as the defendant had done in *Taylor*.[154] Smith sought to withdraw his plea on one occasion, nearly two months after it had been accepted by the Court.[155] Based on Smith's conduct following the meeting, common sense dictates that Smith abandoned his motion based on the advice of his counsel that the claim was meritless. Based on these facts, the Court cannot find that trial counsel was deficient for failing to file a motion to withdraw Smith's plea.

That being said, even if trial counsel believed the basis of Smith's claim was meritless, they could have informed the Court of their client's request and the events that followed would have provided the Court the opportunity to confirm or dispel

[153] D.I. 74 at 29-30.

[154] D.I. 74 at 24.

[155] Smith signed the Plea agreement and the Truth-In-Sentencing Guilty Plea form on August 23, 2017. The Court held a Plea Colloquy on August 30, 2017, where Smith represented to the Court his entry to the conditions of the plea agreement. After a thorough colloquy, the Court accepted the plea. Smith's only request to withdrawal the plea occurred on October 9, 2017, nearly two months after agreeing to the plea.

Smith's intentions during sentencing. While Smith's conduct directly following trial counsels' advice could lend itself to the conclusion that Smith intended to abandon his request, notifying the Court at sentencing would have likely resolved any ambiguity as to Smith's position. Doing so would have allowed Smith the opportunity to seek new counsel or continue *pro se* if his true intention was to withdraw his guilty plea.

Counsel's Failure to File a Motion to Withdraw Plea Did Not Prejudice Smith

Even assuming arguendo that trial counsel should have filed the requested motion to withdraw Smith's plea or otherwise notified the Court at sentencing regarding the same, Smith cannot demonstrate any prejudice because of such inaction on the part of counsel.

When analyzing the *Strickland* prejudice prong, the Court considers "whether the petitioner has shown that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," with "a reasonable probability" meaning "a probability sufficient to undermine confidence in the outcome."[156] Defendant must show that a reasonable probability that but for counsel's error, he would have (1) insisted on going to trial and (2) the trial court would have granted his motion to withdraw the plea.[157]

[156] *Strickland*, 466 U.S. at 694, 104 S.Ct. 2052.

[157] *Reed*, A.3d 807, at 829-30.

Given that Smith's request to withdraw his guilty plea manifested after the Court's acceptance, his right to withdraw was not absolute and unqualified. Any withdrawal after the Court's acceptance of the plea would only be proper upon a showing of a "fair and just reason" under Rule 32(d).[158] The decision to grant or deny the motion "rests in the sound discretion of the trial court and is reviewable only for abuse of discretion."[159] While considering the plea withdrawal motion, the Court "must give due weight to the proceedings by which the plea was taken and the presumptively truthful statements the defendant made in the colloquy."[160]

Applying the *Strickland* prejudice analysis to the instant matter, the Court finds that Smith has failed to meet his burden. The record does not provide sufficient evidence to demonstrate that Smith would have otherwise insisted on going to trial. Smith argues, without pointing to supporting evidence, that prejudice is presumed because had defense counsel allowed him to withdraw the plea, he would have proceeded to trial. To the contrary, the record shows Smith's continued hesitation

[158] *Reed v. State*, 258 A.3d 807, 823 (Del. 2021). Superior Court Criminal Rule 32(d) provides, "If a motion for withdrawal of a plea of guilty or nolo contendere is made before imposition or suspension of sentence or disposition without entry of a judgment of conviction, the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. At any later time, a plea may be set aside only by motion under Rule 61." Super.Ct.Crim.R 32(d).

[159] *Reed*, A.3d 807, 830 (citing *State v. Insley*, 141 A.2d 619, 622 (Del. 1958)).

[160] *Id.* (citing *Scarborough*, 938 A.2d at 649-650) ("Where the defendant has signed his Truth-in-Sentencing Guilty Plea Forms and has answered at the plea colloquy that he understands the effects of the plea, the defendant must show by clear and convincing evidence that he did not sign those forms knowingly and voluntarily.").

to stand trial based on his desire to receive mental health treatment for as long as possible.[161] The record further indicates that Smith had expressed to counsel his desire to spare his family the associated burdens of trial.[162] At sentencing, Smith opted not to speak, allowing counsel to speak on his behalf.[163] Unlike the defendants in *Reed* and *Taylor*, Smith did not insist that the motion to withdraw guilty plea be filed. It is only now, more than five years after sentencing, that Smith brings forth assertions that he would have insisted on going to trial. Smith's conclusory assertions after the fact do not establish a reasonable probability that he would have chosen a jury trial but for his counsels' alleged deficiency.

Smith has also failed to show a reasonably probability that the Court would have granted the motion to withdraw had it been brought by trial counsel. Smith's cited basis for withdrawing the plea was a typographical error in the original

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[161] D.I. 74 at 19 ("Robert's biggest concern was always that he would rather die than spend the rest of his life in jail and he wanted treatment. And he was concerned that he was not going to receive enough time in Delaware State Hospital…."); *see also* D. I. at 20.

[162] *Id*. at 20 ("[O]ne of the factors was that he also didn't want to put his remaining family members through a trial as to what apparently occurred. And he wanted to accept responsibility for what happened.").

[163] J.E. 1, Transcript from sentencing hearing held on November 2, 2017 at 30.

> THE COURT: Okay [Defense Counsel], did your client wish to address? I know you've read his written statement, but I just want to find out if he wishes to address; no?
>
> DEFENSE COUNSEL: I don't believe he wishes to allocate any further.

indictment. "The purpose of an indictment is to put the accused on full notice of what he is called upon to defend, and to effectively preclude subsequent prosecution for the same offense."[164] Had defense counsel filed the motion on the grounds of the typographical error, it is unlikely that the Court would have been satisfied that such a basis was a fair or just reason to withdraw given the circumstances. Given the unlikelihood of the Court granting a motion to withdraw guilty plea based on a typographical error, Smith cannot demonstrate prejudice under the second prong of *Strickland*.

Moreover, the existence of the typographical error in the indictment would not negate Smith's previous sworn representations to the Court that the plea was entered knowingly, intelligently, and voluntarily. At no point in the plea process did Smith raise the issue of the motion to withdrawal with the Court. Absent Smith's initial letter to counsel where he requested the withdrawal, there is no record evidence of Smith communicating his desire to withdrawal his guilty plea to the Court. The record indicates Smith made an informed, reasoned decision to plea to guilty but mentally ill after months of discussions with defense counsel. As such, Smith cannot satisfy the second prong of *Strickland*, and his claim of ineffective assistance of counsel with respect to ground two must fail.

[164] *White v. State*, 243 A.3d 381, 408 (Del. 2020) (citing *Dahl v. State*, 926 A.2d 1077, 1081 (Del. 2007)).

Defendant Received Some Benefit from Taking the Plea

Lastly, Smith argues that he received no benefit from his plea because he received a mandatory minimum sentence of life imprisonment as a result of the plea. Smith notes that, at the time of the plea, the death penalty had been ruled unconstitutional in the State of Delaware under *Rauf* so the plea provided no benefit to him in terms of his sentence since he was no longer at risk of being put to death.[165] Smith argues that his mental health evaluations point to his incentive to continue to trial because, under a self-defense or extreme emotional distress argument, he could potentially be found guilty of the lesser offense of Manslaughter. Essentially, Smith argues that "he had nothing to lose" by going to trial. That argument, however, ignores the factual reality of his status as a habitual offender and the evidence Smith would be facing were he to proceed to a trial.

If Smith had proceeded to trial on a self-defense strategy and prevailed, Smith was not going to receive a sentence for Manslaughter because the State would have, in all likelihood, charged Smith as a habitual offender. So, even if Smith had been found guilty of Manslaughter instead of Murder First Degree, as a habitual offender

[165] When Smith's case began it was classified as a capital murder case with the potential for the death penalty. During the life of the case, the Supreme Court's decision in *Rauf v. State* found the death penalty unconstitutional in Delaware. *Rauf v. State*, 145 A.3d 430 (Del. 2016). Shortly after, the Supreme Court clarified that *Rauf* would retroactively apply to a death sentence that was already final when *Rauf* was decided. See *Powell v. State*, 153 A.3d 69, 71 (Del. 2016). In doing so, those whose faced death sentences had them vacated, and instead were sentenced to life imprisonment without the possibility of parole. *Id*. at 76.

he would still have faced life imprisonment.[166] The only avenue in which Smith would have avoided a life sentence was if he was found not guilty at trial.[167] And the weight of the evidence against him made an acquittal improbable.

Smith's daughter would have been the primary witness at trial and would have provided damning testimony. The daughter would have testified that Smith was in the apartment with the victim when she left the residence. When the daughter returned a few minutes later, she found Smith at the scene sitting on the steps of the apartment holding the victim's cell phone. The Defendant told her he was locked out of the apartment and that the victim was dead inside. When the daughter opened the door, she found her mother in a pool of blood with a bloody screwdriver lying next to her. As she tried to help her mother, Smith took his daughter's keys and fled the scene in her car. Shortly after leaving the scene, the Defendant spoke to a second witness and said, "I killed that bitch . . . just playing." A short time later, the Delaware State Police located the Defendant traveling northbound on I-95 near Rt. 273, southwest of the City of Wilmington. A pursuit ensued and the Defendant ultimately crashed the car on Linden Street. Upon removing Smith from the car, the police observed that his sweatshirt, boots, and pants appeared to be stained with blood.

[166] D.I. 74 at 21-22.

[167] D.I. 74 at 15-16.

Although he did not receive a decrease in the number of years on his sentence by virtue of the plea, Smith did obtain some, albeit smaller, benefits from the plea. By entering into the plea of guilty but mentally ill, Smith was transferred and held at the Delaware Psychiatric Center for over two years receiving mental health treatment. The record reveals that Smith continually desired to obtain as much mental health treatment as possible.[168] By accepting the plea, Smith received almost immediate treatment at the Delaware Psychiatric Center as well as a full psychiatric examination. Moreover, by accepting the plea, the State did not have an expert interview Smith and make a report that contradicted his position that he was suffering from a mental illness at the time of the killing.[169] This fact may be of some benefit to Smith if he were to attempt to have his sentence commuted in the future. Smith also expressed to defense counsel that he did not wish to put his family through a trial.[170] The plea spared his family the additional trauma that a trial would impose. While these benefits may not have been as substantial as those received by other defendants in other circumstances, the Court cannot conclude that, in this case, counsel was deficient for failing to achieve more on behalf of the Defendant through

[168] D.I. 74 at 19-20.

[169] D.I. 74 at 17-18.

[170] D.I. 74 at 20.

the plea bargain process. As such, Smith fails to meet his burden under *Strickland* with respect to ground three of his claims for ineffective assistance of counsel.

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In conclusion, Smith's plea represented a rational choice given the pending charges, the evidence against him, and the possible sentences he was facing. Smith entered into his plea knowingly, intelligently, and voluntarily. The Court finds that defense counsel was not deficient in failing to bring forth Smith's request for a motion to withdraw guilty plea because the facts suggest he had abandoned that desire. Moreover, given that the basis of Smith's request would not have qualified as a fair and just reason for withdrawal under Superior Court Criminal Rule 32(d), the Court finds that Smith did not suffer any prejudice for the failure to bring such a motion that would satisfy *Strickland*. And finally, the Court finds that Smith's plea inured to his benefit. Accordingly, Smith's ineffective assistance of counsel claims are without merit.

For the reasons set forth above, Defendant's Motion for Postconviction Relief should be **DENIED**.

IT IS SO RECOMMENDED.

/S/ *Janine M. Salomone*
The Honorable Janine M. Salomone

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