

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

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|-----------------------------|---|-------------------|
| STATE OF DELAWARE |) | |
| |) | IK 98-08-0484-R 1 |
| v. |) | |
| |) | |
| ROBERT B. RAMPMEYER, |) | |
| ID No. 9808014797 |) | |
| |) | |
| Defendant. |) | |

ORDER

On this 9th day of December, 2002, upon consideration of the Defendant's Motion for Postconviction Relief, the Commissioner's Report and Recommendation, and the record in this case, it appears that:

1. The defendant, Robert B. Rampmeyer ("Rampmeyer"), pled guilty to one count of Unlawful Sexual Intercourse in the First Degree, 11 *Del. C.* § 775(a)(4). Rampmeyer was facing trial on the above charges along with eight additional counts of Unlawful Sexual Intercourse in the First Degree and one count of Continuous Sexual Abuse of a Child, 11 *Del. C.* § 778 involving his then thirteen year old daughter.

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December 9, 2002

2. Pursuant to a pleas agreement, Rampmeyer was sentenced to twenty-five years incarceration, suspended after serving fifteen years minimum mandatory.

3. The defendant did not appeal his conviction or sentence to the Delaware Supreme Court. Instead he filed the instant motion for postconviction relief pursuant to Superior Court Criminal Rule 61.

4. The matter was referred to the Court Commissioner for findings of fact and recommendation pursuant to 10 *Del. C.* § 512(b) and Superior Court Civil Rule 132. The Commissioner has filed a Report and Recommendation recommending that the Court deny Rampmeyer's motion for postconviction relief. No objections to the Report have been filed.

NOW, THEREFORE, after careful and *de novo* review of the record in this action, and for the reasons stated in the Commissioner's Report and Recommendation dated November 25, 2002,

IT IS ORDERED that the thoughtful and well-reasoned Commissioner's Report and Recommendation is adopted by the Court and Rampmeyer's Motion for Postconviction Relief is *denied*.

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ID No. 9808014797

December 9, 2002

/s/ William L. Witham, Jr.
Judge

dmh

cc: Prothonotary

cc: Hon. Andrea Maybee Freud

John R. Garey, Esquire

Robert B. Rampmeyer, *pro se*

Order Distribution (w/Report & Recommendation)

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| STATE OF DELAWARE |) | |
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| v. |) | |
| |) | Cr. A. No. IK98-08-0484-R1 |
| ROBERT B. RAMPMEYER, |) | |
| |) | |
| Defendant. |) | |
| ID No. 9808014797 |) | |

John R. Garey, Esq., Deputy Attorney General, Dover, Delaware, for the State of Delaware.

Robert B. Rampmeyer, *pro se*.

COMMISSIONER’S REPORT AND RECOMMENDATION

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

FREUD, Commissioner
November 25, 2002

The defendant Robert B. Rampmeyer, (“Rampmeyer”) pled guilty on March 12, 1999, to one count of Unlawful Sexual Intercourse in the First Degree, 11 *Del. C.* § 775(a)(4). Rampmeyer was facing trial on the above charges along with eight additional counts of Unlawful Sexual Intercourse in the First Degree, *Del. C.* § 775(a)(4) and one count of Continuous Sexual Abuse of a Child, 11 *Del. C.* § 778.

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All the charges involved Rampmeyer's then thirteen year old daughter. Pursuant to the plea agreement, Rampmeyer was sentenced to twenty five years incarceration, suspended after serving fifteen years minimum mandatory incarceration for probation. Had Rampmeyer gone to trial and been convicted as charged, he would have faced a fifteen year minimum mandatory sentence on each of the nine counts of Unlawful Sexual Intercourse in the First Degree and the possibility of nine separate sentences of life imprisonment. Rampmeyer did not appeal his conviction or sentence to the State Supreme Court, instead he filed the instant motion for postconviction relief pursuant to Superior Court Criminal Rule 61. In his motion, Rampmeyer alleges three grounds for relief:

Ground One: The attribute (sic) of being incoformity (sic) with the law. The movant has a protected liberty interest in a proceeding under the protection from Abuse Act FAA. Under 10 *Del. C.* § 1041 part D subchapter III. This is a violation of the Fourteenth Amendment, Delaware Constitution (sic) 1, 6, 7, 9.

Ground Two: The proceeding used to instition (sic) of the charges. The act was intended to protect against domestic violence. A proceeding under this Act in which the petitioner is seeking an order of protection from abuse is a civil proceeding held in Family Court by a Master.

Ground Three: The Court lacked jurisdiction. Accordingly a subsequent criminal proceeding based upon the same facts as those alleged in a petition for an order of protection

of abuse. This is in the Family Court and the hearing is a probable cause hearing by a Judge.¹

Rampmeyer alleges he did not raise these “issues” earlier because his attorney “never questioned the proceedings that instituted the alleged charges.”

Under Delaware Law this Court must first determine whether Rampmeyer has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of his postconviction relief claim.² This is Rampmeyer’s first motion for postconviction and it was filed within three years of his conviction becoming final, so the requirements of Rule 61(i)(1) - requiring filing within three years - and 2) - requiring that all grounds for relief be presented in the initial Rule 61 motion - are met. None of Rampmeyer’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. One can argue that each of Rampmeyer’s contentions are based on ineffective assistance of counsel due to his

¹ I note that Rampmeyer’s claims are identical to those raised by another defendant in *State v. Bowers*, Del. Super.

² *Bailey v. State*, Del. Supr., 588 A.2d 1121, 1127 (1991); *Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990).

catch all claim that “his attorney never questioned the proceedings”, therefore, he has alleged cause for his failure to have raised these issues earlier. Rule 61(i)(3) does not bar relief as to these claims at this point should Rampmeyer demonstrate that his counsel was ineffective and that he was prejudiced by counsel's actions.

Rampmeyer’s contentions superficially raise the issue of ineffective assistance of counsel. To prevail on his claims of ineffective assistance of counsel Rampmeyer must meet the two prong test of *Strickland v. Washington*.³ In the context of a guilty plea challenge, *Strickland* requires that 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

³ 466 U.S. 668 (1984) ("*Strickland*"); *Larson v. State*, Del. Supr., No. 200, 1994, Hartnett, J. (June 23, 1995) (ORDER); *Albury v. State*, Del. Supr., 551 A.2d 53 (1988), *Skinner v. State*, Del. Supr., 607 A.2d 1170, 1172 (1992).

result of a trial would have been his acquittal.⁴ In addition, Delaware courts have consistently held that in setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.⁵ When examining the representation of counsel pursuant to the first prong of the *Strickland* test, there is a strong presumption that counsel's conduct was professionally reasonable.⁶ This standard is highly demanding.⁷ *Strickland* mandates that when viewing counsel's representation, this Court must endeavor to eliminate the distorting effects of hindsight."⁸

Following a complete review of the record in this matter, it is abundantly clear that Rampmeyer has failed

⁴ *Hill v. Lockhart*, 474 U.S. 52, 57, 59 (1985); *Strickland*, 466 U.S. at 688, 694; *Accord Larson v. State*, supra at 3-4; *Blanchfield v. State*, Del. Supr., No. 97, 1994, Veasey, C.J. (Oct. 18, 1994) (ORDER); *Skinner v. State*, 607 A.2d at 1172; *Albury v. State*, 551 A.2d at 58.

⁵ *Younger v. State*, 580 A.2d at 556; *Skinner v. State*, Del. Supr., No. 318, 1993, Holland, J. (March 31, 1994) (ORDER).

⁶ *Albury v. State*, 551 A.2d at 59 (citing *Strickland*, 466 U.S. 689); see also *Larson v. State*, supra at 4; *Flamer v. State*, 585 A.2d 736 at 753 (1990).

⁷ *Id.* at 754.

⁸ *Strickland*, 466 U.S. at 639.

to allege any facts whatsoever sufficient to substantiate his claim that his attorney was ineffective. I find counsel's affidavit, in conjunction with the record, more credible than Rampmeyer's contention that his counsel's representation was ineffective. Rampmeyer was facing trial on many serious charges and risked being sentenced to nine life imprisonment sentences. Rampmeyer's counsel was able to negotiate a plea bargain with the State which resulted in only fifteen years minimum mandatory incarceration. Rampmeyer and his attorney discussed the case prior to the entry of the plea. The case against Rampmeyer was exceptionally strong given his confession to the police. The plea bargain was clearly advantageous to Rampmeyer. Counsel's representation was certainly well within the range required by *Strickland*. Additionally, when Rampmeyer entered his guilty plea he stated he was satisfied with defense counsel's performance. He is bound by his statement unless he presents clear and convincing evidence to the contrary.⁹ Consequently, Rampmeyer has failed to establish that his

⁹ *Blanchfield v. State*, Del. Supr., No. 97, 1994, Veasey, C.J. (Oct. 18, 1994) (ORDER); *Mapps v. State*, Del. Supr., No. 3, 1994, Holland, J. (March 17, 1994) (ORDER) (citing *Sullivan v. State*, Del. Supr., 636 A.2d 931, 937-938 (1994)).

counsel's representation was ineffective under the *Strickland* test.

Even assuming, *arguendo* that counsel's representation of Rampmeyer was somehow deficient, Rampmeyer 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.¹⁰ Rampmeyer simply asserts that his counsel didn't "question the proceedings" in an attempt to show prejudice. Rampmeyer does not suggest what more counsel could have done. This statement is clearly insufficient to establish prejudice. Rampmeyer has failed to demonstrate any prejudice stemming from counsel's representation. In deed, it is difficult to imagine any possibility of prejudice in this case given Rampmeyer's absurd claims. Rampmeyer's assertion that a civil protection from abuse proceeding somehow trumps a felony sexual assault of a minor charge is nonsensical and idiotic. Not only are Rampmeyer's claims procedurally barred they are some of the most absurd I have ever seen. They have no merit whatsoever.

¹⁰ *Larson v. State*, supra at 5; *Younger v. State*, 580 A.2d at 556.

Furthermore, prior to entering his guilty plea, Rampmeyer filled out a Guilty Plea Form in his own handwriting. Rampmeyer wrote that he understood the constitutional rights he was relinquishing by pleading guilty and that he freely and voluntarily decided to plead guilty to the charge listed in the plea agreement. Rampmeyer is bound by the statements he made on the signed Guilty Plea Form unless he proves otherwise by clear and convincing evidence.¹¹ I confidently find that Rampmeyer entered his guilty plea knowingly and voluntarily.

I find that Rampmeyer's counsel represented him in a competent and effective manner and that Rampmeyer has failed to clearly demonstrate any prejudice stemming from the representation. I also find that Rampmeyer's guilty plea was entered knowingly and voluntarily. Consequently, I recommend that the Court *deny*

¹¹ *Hickman v. State*, Del. Supr., No. 298, 1994, Veasey, C.J. (Oct. 11, 1994) (ORDER); *Smith v. State*, Del. Supr., No. 465, 1989, Walsh, J. (Jan. 4, 1990) (ORDER). See also *Sullivan v. State*, Del. Supr., 636 A.2d 931, 938 (1994) (ruling the fact that defendant filled out Truth In Sentencing Guilty Plea Form in defendant's own handwriting supported the Superior Court's conclusion that defendant's decision to plead guilty was knowing and voluntary).

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Rampmeyer's motion for postconviction relief as procedurally barred.¹²

Freud

/s/ Commissioner Andrea M.

Commissioner Andrea M.
Freud

oc: Prothonotary
xc: Hon. William L. Witham, Jr.
John R. Garey, Esq.
John H. McDonald, Esq.
Robert B. Rampmeyer

¹² Additionally, as clearly noted in both Defense Counsel's affidavit and the State's reply, each of Rampmeyer's claims are also entirely meritless.