

Burglary Second Degree (IN 00-10-0552 and IN 00-10-0569). Pursuant to the plea agreement, the State agreed to enter a nolle prosequi on all remaining charges of that indictment. Defendant admitted that he was an habitual offender pursuant to 11 *Del. C.* § 4214(a) and agreed to sixteen (16) years Level V incarceration. On November 5, 2001, Defendant filed a motion for appointment of counsel pursuant to Superior Court Criminal Rule 61(e)(1) to assist him in presenting his postconviction relief motion. On February 22, 2002, the Court found that defendant's claims were meritless and the motion was denied.

(2) On July 17, 2002 Defendant filed this Motion for Postconviction Relief.

Defendant asserts a variety of grounds in his motion for postconviction relief:

(a) Defendant argues ineffective assistance of counsel and alleges the following:

(i) plea agreement was materially defective and fraudulent as defendant agreed to a sixteen year sentence without the benefit of any good time and defendant did not fully understand the ramifications; defendant now claims that mandatory time without the benefit of any good time, is prejudicial; also defendant purports that this is a seventeen year sentence, rather than the agreed upon 16 year sentence, due to probation time which defendant did not understand must also be served;

(ii) court illegally declared the defendant to be a habitual offender by

not informing him of the prior felony convictions;

(iii) defendant did not enter into plea agreement knowingly, voluntarily or intelligently because counsel did not sufficiently investigate as defendant claims that his actions do not constitute the crime of burglary;

(iv) plea agreement was accepted in violation of Superior Court Criminal Rule 11;

(v) counsel did not inform defendant of his right to appeal;

(vi) counsel failed to prepare and subject prosecution's case to any meaningful adversarial testing;

(b) Defendant additionally states that Mr. Pederson is not his attorney of record and had a conflict of interest with the prosecutor, Stephen Walther, Esquire, due to Mr. Pederson's previous employment position.

(3) In evaluating a postconviction relief motion, the Court must first ascertain if any procedural bars of Superior Court Criminal Rule 61(I) apply to the case.¹ If a procedural bar is found to exist, the Court should refrain from considering the merits of the individual claims.² Summary dismissal is provided for pursuant to Rule 61(d)(4) "[i]f it plainly appears from the motion for postconviction relief and the record of prior

¹ See *Younger v. State*, 580 A.2d 552, 554 (Del. 1990); Super. Ct. Civ. R. 61(I).

² See *Id.*

proceedings in the case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal ..." This Court will not address claims for postconviction relief that are conclusory and unsubstantiated.³ Pursuant to Rule 61(a), a motion for postconviction relief must be based on "a sufficient factual and legal basis." In addition, pursuant to Rule 61(b)(2), "[t]he motion shall specify all the grounds for relief which are available to movant ..., and shall be set forth in summary from the facts supporting each of the grounds thus specified."

(4) Moreover, to prevail on his ineffective assistance of counsel claims, Defendant must allege by clear facts the requirements of the *Strickland* test.⁴ Under *Strickland*, Defendant must show that alleged counsel's course of conduct "fell below an objective standard of reasonableness" and that such actions were prejudicial.⁵ It is settled Delaware law that allegations that are entirely conclusory are legally insufficient to prove ineffective assistance of counsel.⁶ Thus, Defendant must be able to show that defense counsel's error was objectively unreasonable and caused prejudice to Defendant's plea of

³ See *Younger.*, 580 A.2d at 555; *State v. Conlow*, Del. Super., Cr. A. No. IN78-09-0985R1, Herlihy, J. (Oct. 5, 1990) at 5; *State v. Gallo*, Del. Super., Cr. A. No. IN87-03-0589-0594, Gebelein, J. (Sept. 2, 1988) at 10.

⁴ *Mapp v. State*, Del. Supr., No. 003, 1994, Holland, J. (Mar. 17, 1994) (ORDER).

⁵ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁶ *State v. Brittingham*, Del. Super., Cr. A. No. IN91-01-1009-R1, Barron, J. (Dec. 29, 1994).

guilty.⁷ Here, Defendant's allegations are not substantiated by any scintilla of evidence.⁸

(5) Moreover, Defendant pled guilty to these charges, in doing so he signified that he understood the constitutional rights he was relinquishing by his plea. A defendant is bound by the statements he made on the signed Plea Form and during the in court colloquy unless he proves otherwise by clear and convincing evidence.⁹

On the guilty plea form, Defendant indicated that he freely and voluntarily decided to plead guilty to the charge listed in the plea agreement. Most importantly, when asked, Defendant indicated that he was not under the influence of alcohol or drugs at the time he signed the guilty plea form that affected his ability to know and to understand the charge against him. Moreover, Defendant also indicated that he understood that the minimum period of incarceration for each offense is eight years and that there will be no good time associated with this sentence. Further, Defendant indicated to the Court that he had discussed the documents and the plea agreement with his attorney and was satisfied with his attorneys' representation of him.

⁷ See *Strickland*, 466 U.S. at 694.

⁸ Attached to his Motion for Postconviction relief is a Memorandum of Law in Support of Rule 61 Motion for Post-Conviction Relief. This Memorandum clearly does discuss the facts of this case, however it primarily indicates that defendant has changed his mind after a valid plea agreement was set forth and entered into.

⁹ *Hickman*, at 3-4; *Smith v. State*, Del. Supr., No. 465, 1989, Walsh, J. (Jan. 4, 1990) (ORDER).

In addition, defendant's attorney indicated that he had extensive conversations with Defendant about the plea. During the plea colloquy Defendant stated that he was able to understand that he was pleading guilty to two counts of burglary and by pleading guilty would be sentenced to sixteen years at Level V incarceration, without good time associated with the sentence. Defendant acknowledged his signatures on the Truth in Sentencing Guilty Plea Form and the Plea Agreement. Defendant stated on the record that he read the questions for himself and wrote his answers himself. Further, the Court was able to witness Defendant's demeanor during the plea colloquy and found him to be alert and that he answered the questions in an appropriate manner.

(6) Acceptance of his guilty plea did not violate Superior Court Criminal Rule 11 since the Court is required to impose a period of "*not less than six months*" probation whenever a court imposes a period of incarceration at Level V custody for one or more offenses that totals one year or more.¹⁰

(7) During the plea colloquy he responded yes to the Court's inquiry as whether he understood that he was waiving the right to appeal.

(8) Finally, regarding the argument that Mr. Pederson was not the attorney of record in this case and had a conflict because of his previous employment, this is not a sufficient legal basis for a collateral attack upon the criminal conviction.

¹⁰11 *Del. C.* § 4204(1). [Emphasis added.]

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For the forgoing reasons the Court finds Defendant's motion meritless, thus
Defendant's Motion for Postconviction Relief is hereby **DENIED**.

IT IS SO ORDERED.

ALFORD, J.

Prothonotary's Office - Criminal Div.