

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
)
)
 v.) I.D. NO. 0002019767
)
)
 GERRON LINDSEY,)
)
 Defendant.)

Date Submitted: August 1, 2002

Date Decided: August 28, 2002

ORDER

UPON DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF

DENIED

Gerron Lindsey, Smyrna, Delaware 19977.

Anthony A. Figliola, Esq. and Sheryl Rush-Milstead, Esq., Wilmington, Delaware,
Attorneys for Defendant.

Stuart Sklut, Esq. and Donald Roberts, Esq., Wilmington, Delaware, Attorneys for the
State of Delaware.

On this 28th day of August 2002, upon consideration of Defendant's Motion for Postconviction Relief filed by the Defendant and the record in this case, it appears to the Court that:

(1) Defendant Gerron Lindsey ("Defendant") was arrested and charged with two counts Murder First Degree: one for intentional murder and one for felony-murder, five counts Possession of a Firearm during the Commission of a Felony, Attempted Murder First Degree, Attempted Robbery First Degree, two counts of Possession of a Deadly Weapon by Person Prohibited and Robbery First Degree.

(2) On April 9, 2002, Defendant accepted a guilty plea offer by the State, which specified that Defendant would plea guilty but mentally ill to Murder First Degree. The State specified that it would not seek the death penalty. The remainder of the charges were to be nolle prossed. On the same date, the Court accepted Defendant's guilty plea and ordered a presentence investigation and an evidentiary hearing to establish the foundation for the Defendant's plea of guilty but mentally ill. An evidentiary hearing was held on June 27, 2002 in which Doctor Sylvia Foster testified and satisfied the Court that Defendant was mentally ill at the time he committed the offense. Following the evidentiary hearing, the Court sentenced Defendant to life imprisonment.

(3) Before the evidentiary hearing, Defendant filed a motion to withdraw his guilty plea. The Court denied his motion finding that Defendant knowingly and voluntarily consented to the plea agreement. The Court refused to vacate his guilty plea as Defendant merely changed his mind.¹ Defendant now files this Motion for Postconviction relief seeking to withdraw his guilty plea based on ineffective assistance of counsel.

(4) 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.² If a procedural bar is found to exist, the Court should refrain from considering the merits of the individual claims.³ 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 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.⁴ Pursuant to Rule 61(a), a motion for

¹ *State v. Marks*, I.D. No. 9408013769, 1999 WL 1611338 (Del. Super. Mar. 22, 1999).

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

³ *See Id.*

⁴ *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.

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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."

(5) Moreover, to prevail on his ineffective assistance of counsel claims, Defendant must allege by clear facts the requirements of the *Strickland* test.⁵ 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.⁶ It is settled Delaware law that allegations that are entirely conclusory are legally insufficient to prove ineffective assistance of counsel.⁷ Thus, Defendant must be able to show that defense counsel's error was objectively unreasonable and caused prejudice to Defendant's trial.⁸ Here, Defendant's allegations are not substantiated by any scintilla of evidence.⁹

⁵ *Mapp v. State*, Del. Supr., No. 003, 1994, Holland, J. (Mar. 17, 1994) (ORDER).

⁶ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁷ *State v. Brittingham*, Del. Super., Cr. A. No. IN91-01-1009-R1, Barron, J. (Dec. 29, 1994).

⁸ See *Strickland*, 466 U.S. at 694.

⁹ 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, as it references a 1987 plea agreement along with a five year recommended sentence and a total imposed fifty-five year sentence. Due to the numerous factual references in the Memorandum not related to this case, the Court will not give any weight to the Memorandum.

(6) 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.¹⁰

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 mandatory penalty for the charge he was pleading guilty to would be life imprisonment without the benefit of probation or parole. Further, Defendant signified in the Plea Form that he was satisfied with his attorneys' representation of him.

In addition, his attorney indicated that he had extensive conversations with Defendant about the plea. Prior to the plea colloquy Defendant was sworn. Defendant, under oath, stated that he was taking medications for depression and sleep. He further indicated that he was able to understand that he was pleading guilty to Murder in the First Degree and by pleading guilty would be sentenced to life imprisonment. Defendant

¹⁰ *Hickman*, at 3-4; *Smith v. State*, Del. Supr., No. 465, 1989, Walsh, J. (Jan. 4, 1990) (ORDER).

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acknowledged his signatures on the Truth in Sentencing Guilty Plea Form and the Plea Agreement, which in fact indicate that there is a possibility of the death penalty. His attorney stated on the record that Defendant 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 verbally answered the questions in an appropriate manner.

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

IT IS SO ORDERED.

ALFORD, J.

Prothonotary's Office - Criminal Div.