

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
v.) I.D. No. 0012011266
)
GEORGE THODUS)

Submitted: July 12, 2002
Decided: August 8, 2002

UPON DEFENDANT’S MOTION FOR
POSTCONVICTION RELIEF.
DENIED.

Cynthia Kelsey, Esquire, Deputy Attorney General, Wilmington, Delaware
for the State.

George Thodus, Defendant, *pro se*.

ABLEMAN, J.

Before the Court is a *pro se* Motion for Postconviction Relief filed by defendant, George Thodus. For the reasons set forth herein, the motion is hereby **DENIED**.

On April 19, 2001, defendant pled guilty to five counts of Robbery in the First Degree and one count of Unlawful Sexual Contact. The indictment pending against him charged 22 separate counts, including six robbery first degree charges, six counts of Possession of a Firearm During the Commission of a Felony, six counts of Possession of a Deadly Weapon During the Commission of a Felony, two Assault Second Degree charges, a Burglary in the First Degree charge, one count of Aggravated Menacing, one count of Conspiracy in the Second Degree, and Misdemeanor Criminal Mischief.

Pursuant to the plea agreement, the State dismissed all of the remaining 16 counts. By pleading guilty to the five Robbery First Degree charges and to Unlawful Sexual Contact Third Degree, defendant faced a maximum penalty of 101 years imprisonment at Level V, of which 10 years were mandatory by statute. After an extensive plea colloquy, during which defendant admitted that he was guilty of all six offenses, the Court sentenced him to 20 years at Level V, suspended after the 10 year minimum mandatory terms required by law, for the balance to be served at Level III probation.

On September 28, 2001, defendant filed the instant Motion for Postconviction Relief. The motion is not time barred pursuant to Superior Court Rule 61(i)(1) because it was filed within three years of defendant's sentencing.

Defendant asserts three grounds for relief in his motion. In Ground One, he claims ineffective assistance of counsel, citing generalized claims that his attorney "did not provide substantial legal counsel," showed "a total

lack of interest and unprofessionalism. . . ,” and “did not protect my rights.” He also claims in this ground that counsel did not file a Motion for Correction of Illegal Sentence. Later in the motion, defendant further argues that counsel did not subpoena witnesses for case review and that he did not fill out the plea agreement in his own handwriting.

In Ground Two of the Motion for Postconviction Relief, defendant contends that, when arrested, he “cooperated with the police, did not resist arrest, etc.” He also asserts that he was not armed when arrested.

In Ground Three, defendant claims that his sentence was illegal because he received consecutive sentences on all charges “under one I.D. No.”

Defense counsel Edmund Hillis has filed an Affidavit identifying the number of times that he met with defendant and the substance of their discussions. He has submitted documentation establishing that he provided discovery materials to defendant well in advance of trial. He also attests to having met with members of defendant’s family, to the extent it would not implicate confidentiality concerns. Counsel further acknowledges that he did not file a “Motion of Illegal Sentence” because he had no support in fact or in law for such a claim. Counsel also acknowledges that he did not contact any witnesses because the only witnesses with relevant information were the victims and the co-defendant, and defendant provided no names or addresses of any other witnesses. Finally, counsel avers that he carefully read each of the guilty plea questionnaire questions to defendant, accurately recorded his answers, and reviewed them with him prior to sentencing.

To prevail on his ineffective assistance of counsel claim, defendant must meet the two-pronged test of *Strickland v. Washington*.¹ In the context of a guilty plea challenge, *Strickland* requires a defendant to show that (1) counsel's representation fell below an objective standard of reasonableness,² and (2) counsel's actions were so prejudicial "that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial."³

Under the *Strickland* test, "counsel has the benefit of a "strong presumption that counsel's conduct was professionally reasonable."⁴ The purpose of this presumption is to eliminate the distorting effects of hindsight in examining a strategic course of conduct that may have been within a range of professional reasonableness at the time. *Id.* The second prong of the *Strickland* test requires a showing of "prejudice."⁵ In Delaware, the Court has also consistently required that the defendant assert concrete allegations of actual prejudice and substantiate them, or risk summary dismissal.⁶

On the basis of the allegations in the motion, the transcript of the plea colloquy proceedings in this case, and defense counsel's affidavit, defendant

¹466 U.S. 668 (1984); *Albury v. State*, 551 A.2d 53, 58 (Del.1988) (citing *Hill v. Lockhart*, 474 U.S. 52 (1985)).

²*Albury v. State*, 551 A.2d at 58 (quoting *Strickland v. Washington*, 466 U.S. at 694).

³*Id.* at 60 (quoting *Hill v. Lockhart*, 474 U.S. at 58).

⁴*Id.* at 59.

⁵*Id.*

⁶*Wright v. State*, 671 A.2d 1353, 1356 (Del.1996); *State v. Wilson*, 2001 WL 392357 (Del. Super.); *Skinner v. State*, 1994 WL 91138 (Del. Supr.); *Zimmerman v. State*, 1991 WL 190298 (Del. Super.); *State v. Conlow*, 1990 WL 161241 (Del. Super.).

has clearly failed to establish either prong of the *Strickland* standard, nor do any of his other unrelated alleged grounds in his motion merit relief under Rule 61.

Defendant has failed to satisfy the requirement that he show actual prejudice as he has made only conclusory allegations that he would not have entered a guilty plea but for the “errors” of his trial counsel. He makes no claim that he was forced or induced to plead guilty, that he did not commit the offenses that he admitted in open Court that he committed, or that any of the criticisms of his trial counsel’s performance would have altered the outcome or caused him to insist on going to trial. In fact, the record reflects that defendant’s claims of errors by his lawyer are wholly without merit.

The claim that Mr. Hillis did not fully discuss the matter with defendant or did not provide timely discovery responses are denied by Mr. Hillis and the Court credits his affidavit. Moreover, no matter how often counsel met with defendant (or his family) or no matter how much discovery he provided, defendant makes no showing that the outcome of this case would have been any different.

Similarly, defendant’s claims that Mr. Hillis was ineffective for failing to call witnesses for case review, for failing to file a suppression motion, and for failing to file a “Motion for Illegal Sentence”⁷ must also be summarily dismissed because he fails to provide any concrete basis for why a suppression motion would have changed the outcome in this case, or why witnesses, who are not permitted to testify at case review, should have been subpoenaed, or why the sentence imposed is illegal. In fact, it is not.

⁷ The Court assumes that defendant intended to file a Motion for Correction of Illegal Sentence.

The record of defendant's plea colloquy also reflects that the charges and the potential penalties were explained to defendant prior to his entry of the plea. Defendant acknowledged his guilt before this Court and expressed satisfaction with his attorney's representation. He indicated that he understood all of the constitutional trial rights that he was waiving as a result of the plea. He further indicated that he had carefully reviewed all of the information set forth in the Truth In Sentencing Guilty Plea form, that he understood the maximum and minimum penalties for the charges to which he was pleading guilty, and that he was voluntarily entering his guilty pleas. After an extensive colloquy, the Court accepted defendant's guilty plea, having found that it was knowingly and willingly entered. Defendant is bound by those responses unless he presents clear and convincing evidence that his responses do not reflect his intent.⁸ Defendant has made no such showing on the record before this Court.

With or without the witness oath, a defendant's statements to the Court during the guilty plea colloquy are presumed to be truthful.⁹ These contemporaneous representations by a defendant pose a "formidable barrier in any subsequent collateral proceedings".¹⁰

Defendant asserts "Mr. Hillis did not give me a fair appraisal of the consequences of the plea agreement..." This unsupported statement is belied by defendant's answers to the Court's questions during the plea colloquy:

Q. All right. Do you understand that each of the Robbery in the First Degree counts carries a maximum of 20 years imprisonment,

⁸*Sullivan v. State*, 636 A.2d 931, 938 (Del.1994).

⁹*Davis v. State*, 1992 WL 401566 (Del. Supr.); *Bramlett v. A.L. Lockhart*, 876 F.2d 644, 648 (8th Cir.1989).

¹⁰*Voytik v. United States*, 778 F.2d 1306, 1308 (8th Cir.1985).

for a total of 100 years on the 25 counts?

A. Yes.

Q. And that each of them also require that you serve a minimum mandatory penalty of two years, which makes your minimum mandatory time ten years?

A. Yes, ma'am.

Q. And do you understand the Unlawful Sexual Contact Third charge carries up to a year imprisonment and a fine of up to \$2300?

A. Yes, ma'am.

Q. All right. Do you understand that a guilty plea to a felony causes you to lose your right to vote, to be a juror, or to hold public office?

A. Yes, ma'am.

Q. And have you been advised that this is an offense that results in your loss of the right to own or possess a deadly weapon?

A. Yes, ma'am.

Q. Do you understand that this is also an offense which would require you to register as a sex offender?

A. Yes.

Q. Are you satisfied with your attorney's representation of you and that he has fully advised you of all of your rights under the guilty plea?

A. Yes, ma'am.

Given these answers, and defendant's signature on the guilty plea questionnaire wherein the maximum exposure on each charge is fully set forth, as well as the total penalty of 101 years at Level V to which defendant's guilty plea subjected him, defendant cannot now be heard to complain, after the fact, that he was not fully and totally aware of the consequences of his actions and of the very favorable sentence that was being recommended by the State and ultimately imposed by the Court. In the absence of clear and convincing evidence to the contrary, defendant is bound by his answers on the Truth-In Sentencing Guilty Plea Form and by his testimony in Court prior to the acceptance of the guilty plea.

As an additional basis for his claim of ineffective assistance of counsel, defendant argues that counsel "showed no interest in what I had to say" and that "there were some very important things pertaining to this case I wanted to tell that day that was in my favor." He lists five specific items of information: "1) I had a rough life; 2) I was not armed in the case; 3) I was willing to cooperate with the investigation in the near future with the police; 4) I was doing well on probation; 5) the victim's (sic) are drug dealers." Defendant asserts in conclusory fashion that "[t]hese elements alone could have negotiated a far more better plea bargain."

Defendant does not attempt to explain how knowledge of these factors by either defense counsel or the State could have produced a different result. Defendant's argument is both speculative and conclusory. Furthermore, in its response to the motion, the State explicitly asserts that "a new plea offer will not be forthcoming." Defendant had already received an extremely

favorable plea offer from the State when it agreed to dismiss 16 out of 22 charges and recommend only the statutory minimum Level V time as a sentence. Under the law, defendant could not have received a more lenient sentence, a fact of which he was well aware, as his attorney so stated on the record. Defendant expressed his willingness to accept the offer both in writing and in response to the Court's questioning.

Defendant argues that the Plea Agreement was actually physically filled out by his attorney. The Court assumes that defendant is referring to the Truth-In Sentencing Guilty Plea Form. The fact that counsel made the entries on the form is not relevant because defendant was verbally advised of his rights by the Court, and when questioned, expressed his full understanding of these rights and of the consequences of the guilty plea. He also signed both the plea agreement and the form, thus evidencing his knowledge of both.

As a final ground for relief (the only ground unrelated to counsel's performance), defendant argues that he cooperated with the police and did not resist arrest. This assertion provides no basis whatsoever for postconviction relief, but, assuming it is true, it perhaps explains why defendant was able to obtain a plea agreement from the State allowing him to plead to only six of 22 charges. All of the charges in the indictment subjected him to a total of 42 minimum mandatory years. As a result of the plea agreement, the State's recommendation was limited to only a minimum term of 10 years imprisonment for the five robberies, despite the fact that his maximum exposure was 101 years.

Defendant has also submitted two signed statements from individuals who claim that defense counsel had been unwilling to speak with them. In light of defendant's guilty plea and his acknowledgement that he had

committed the five robberies and was guilty of unlawful sexual contact, counsel's willingness or unwillingness to speak to any potential witness is inconsequential. More significantly, the defendant has made no showing whatsoever how counsel's unwillingness to speak with these individuals would in any way have altered the ultimate outcome of this case, or would have changed his mind about pleading guilty.

For all of the reasons stated above, defendant's Motion for Postconviction Relief is hereby **DENIED**.

IT IS SO ORDERED.