

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

STATE OF DELAWARE )  
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 v. ) I.D. No. 9610016622  
 )  
 HARLAN ARCHIE, )  
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 Defendant. )  
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Submitted: June 6, 2002  
Decided: August 12, 2002

**ORDER**

UPON DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF.  
**DENIED.**

**ORDER**

Paul R. Wallace, Deputy Attorney General, Wilmington, Delaware, Attorney for the State.

Leo John Ramunno, Wilmington, Delaware, Attorney for Defendant.

Ableman, J.

This 14th day of August, 2002, upon consideration of the papers filed by the parties and the record in this case, it appears that:

(1) On August 20, 1997, after a two-day trial, a jury found Defendant, Harlan Archie, guilty of Robbery First Degree, Possession of a Deadly Weapon During the Commission of a Felony, Possession of a Weapon by a Person Prohibited, and Burglary Second Degree. The Court sentenced Defendant as a habitual offender to a mandatory forty-eight year term of Level 5 incarceration, followed by probation.<sup>1</sup> Defendant subsequently appealed his conviction. On December 29, 1998, the Supreme Court affirmed Defendant's conviction.<sup>2</sup> Defendant has now filed this Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61.

(2) The facts leading up to Defendant's conviction are set forth in detail in the Supreme Court's opinion affirming his conviction.<sup>3</sup> Briefly, on September 23, 1996, Defendant met his victim, Robert Williamson, on a bus and they decided to go shopping together. Williamson was 28 years old at the time and suffered from cerebral palsy. After shopping at the mall, they returned to Williamson's house. In the following weeks, Defendant asked Williamson for money. Williamson twice loaned money to Archie.

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<sup>1</sup> The Court initially sentenced Defendant on November 21, 1997. However, having determined that it incorrectly interpreted the habitual offender statute, the Court vacated that sentence and conducted a second sentencing hearing on December 19, 1997.

<sup>2</sup> *Archie v. State*, 721 A.2d 924 (Del. 1998)

<sup>3</sup> *Id.* at 925-926.

(3) On October 12, 1996, Archie returned to Williamson's home in search of more money. When Williamson opened the door, Defendant threatened him with a knife and told Williamson he would kill him if Williamson called the police. Williamson gave Defendant forty dollars. Defendant returned later the same day and took another forty dollars from Williamson. On October 15, 1996, Defendant again returned to Williamson's apartment. While Williamson slept, Defendant cut the telephone lines and broke into the living room. Defendant demanded money from Williamson and took twenty dollars, a gym bag, and a pair of sneakers.

(4) In his defense, Defendant testified that Williamson gave him money to buy marijuana, which Williamson denied. Defendant told Williamson that he had spent the money on other items, but Williamson did not seem to care. Defendant also denied ever pulling a gun on Williamson. At the conclusion of the evidence, the jury found Defendant guilty on all charges.

(5) Under established procedure, the Court must first determine whether Defendant has met the procedural requirements of Superior Court Criminal Rule 61(i) before the Court may consider the merits of the postconviction relief claims.<sup>4</sup> This is Defendant's first motion for postconviction relief. However, as explained below, the Court finds that Defendant's second and third grounds for relief are procedurally barred pursuant to Rule 61(i)(3). The Court may otherwise consider the merits of Defendant's motion.

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<sup>4</sup> *Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990).

(6) In support of his motion, Defendant raises three grounds for relief: that he received ineffective assistance of counsel, that his sentence represents cruel and unusual punishment, and that the Court's determination that Defendant was a habitual offender violated his right to due process of law. Defendant claims that his second and third grounds for relief were not raised due to defense counsel's ineffective assistance of counsel.

(7) Defendant's first ground for relief alleges ineffective assistance of counsel by his defense attorney at trial and during his appeal. A criminal defendant who raises an allegation of ineffective assistance of counsel must show that an attorney's conduct did not meet reasonable professional standards so that such conduct was prejudicial to the defendant.<sup>5</sup> It is the defendant's burden to show, under the totality of the circumstances, that "counsel was so incompetent that the accused was not afforded genuine and effective legal representation."<sup>6</sup> A defendant alleging prejudice must be able to show that "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable."<sup>7</sup>

(8) A defendant's burden to establish a claim of ineffective assistance of counsel is difficult to meet since there is a strong presumption that the attorney's conduct was reasonable.<sup>8</sup> Defendant must also "[o]vercome the presumption that, under the

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<sup>5</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

<sup>6</sup> *Renai v. State*, 450 A.2d 382, 384 (Del. 1982)(citations omitted).

<sup>7</sup> *Strickland*, 466 U.S. at 687.

<sup>8</sup> *Id.* at 669.

circumstances, the challenged action might be considered sound trial strategy.”<sup>9</sup> Therefore, under *Strickland*, the Court’s analysis must be comprised of two components: 1) whether defense counsel’s performance was deficient; and 2) if so, whether the deficient performance resulted in prejudice that “so upset the adversarial balance between the defense and prosecution that the trial was rendered unfair and the verdict rendered suspect.”<sup>10</sup>

(9) In support of his initial ground for relief, Defendant first claims that his counsel failed to properly investigate and prepare for his trial. Defendant claims that his counsel “did not prepare for trial and did not meet with his client prior to trial” and that counsel was “generally unprepared for the legal proceedings.” Defendant alleges that counsel did not fully investigate the case or investigate all defenses which might have been available. Defendant also argues that his counsel failed to fully and intelligently inform Defendant about a plea offer extended by the State. Specifically, he submits that counsel did not inform him of the possibility of a habitual offender enhancement to any ultimate sentencing.

(10) Defendant does not elaborate further in his memorandum in support of his motion for postconviction relief as to any specific behavior of his counsel to support his general allegations of unpreparedness. In response, the State requests that the claims be dismissed as conclusory. In his reply memorandum, Defendant attempts to specify the

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<sup>9</sup> *Id.* at 681.

<sup>10</sup> *Lockhart v. Fretwell*, 506 U.S. 364, 369 (1993)(quoting *Nix v. Whiteside*, 475 U.S. 157, 175 (1986)).

behavior on behalf of his defense counsel to which he refers. Defendant claims that his attorney never met with him while he was awaiting trial and that he never met his attorney until the day of trial. Counsel did not speak to Defendant regarding a plea offer. Counsel failed to call any of the witnesses he informed Defendant he would call, nor did he argue any of the points of law specifically requested by Defendant. Defendant also claims that counsel did not investigate the possibility of character witnesses or other “defense related” witnesses. Defendant claims that, “counsel did not fashion a defense for no other reason that counsel had not met with the Defendant sufficiently to even determine the existence of one.”

(11) Defendant also argues that his counsel failed to fully and intelligently inform him of a plea offer by the State. Specifically, counsel advised him of a “twenty-year offer” by the State, but did not inform him of the possibility of an habitual offender enhancement to any ultimate sentencing. Defendant claims that, had he known the true possibility of facing a mandatory sentence of forty-eight years if convicted at trial, he would have accepted the plea offer.

(12) By affidavit, Defendant’s counsel refutes the allegations made by Defendant. Counsel states that he met with Defendant on several occasions to discuss the legal elements and factual nature of the offenses involved, his possible defenses, and other aspects of the case. Counsel and Defendant discussed a defense strategy which entailed trying to discredit the alleged victim and providing Defendant’s testimony as an alternative to that of the alleged victim. Counsel states that, because the incidents between Defendant

and the alleged victim were not witnessed by others, there were no additional witnesses to contact.

(13) Counsel avers that he discussed with Defendant the possibility of presenting character evidence, but because Defendant was a career criminal facing life imprisonment, counsel believed that cross-examination of those witnesses could have proved devastating. Counsel states that he reviewed the discovery materials provided by the State to prepare Defendant's case and requested additional discovery to help support Defendant's version of events.

(14) Defense counsel also avers that he fully advised Defendant of the plea offer extended by the State. The plea offer extended to Defendant included entering a guilty plea to Robbery First Degree, an admission that Defendant was a habitual criminal, and a twenty- year minimum mandatory sentence. Counsel explains in his affidavit that, because the habitual offender statute under which Defendant was sentenced was relatively new, he had intended to argue that habitual offender status could not be applied to each crime for which Defendant was convicted if he went to trial. However, counsel states that he reviewed with Defendant the possibility that Defendant could face additional mandatory time for the other charges if convicted after trial. Counsel also discussed with Defendant the fact that he faced the possibility of up to life imprisonment if he rejected the plea offer and went to trial. Counsel states that Defendant showed no interest in accepting the plea offer, but continued to assert his innocence.

(15) Upon review of the record in this case and the affidavit of Defendant's trial counsel, the Court cannot find that counsel's representation of Defendant prior to and during trial did not meet reasonable professional standards so that his conduct was prejudicial to Defendant. Despite Defendant's allegations that counsel never met with him prior to trial, counsel states that he met with Defendant on several occasions and reviewed with him his trial strategy and other matters. In addition, counsel reviewed all discovery offered by the State and requested additional information that he thought would be helpful to Defendant's defense.

(16) Nor can the Court find that Defendant's claims that Counsel failed to call any of the witnesses he informed Defendant he would call, did not argue any of the points of law specifically requested by Defendant, and failed to investigate the possibility of character witnesses or other "defense related" witnesses constitute ineffective assistance of counsel. Rather, given counsel's explanations for his tactics in his affidavit, the Court finds that Defendant's claims represent sound trial strategy on behalf of counsel.

(17) The Court cannot find that counsel misled Defendant regarding the terms of the plea offer by the State. Although counsel concedes that he did not believe at the time that the habitual offender statute allowed Defendant to be sentenced separately for each crime, counsel avers that he explained to Defendant that he faced the possibility of additional mandatory time, and indeed, that he faced the possibility of a life sentence if convicted on all counts. As a result, the Court cannot find that counsel's conduct in conveying the State's plea offer to Defendant did not meet reasonable professional standards.



(18) Defendant also claims that his counsel failed to raise all possible issues when appealing Defendant's conviction. Defendant argues that the sole issue raised on direct appeal was whether the Court erred by refusing to grant a mistrial due to prosecutorial misconduct regarding an improper closing statement made by the State. Defendant argues that the appeal failed to address sentencing matters and to raise issues of ineffective assistance of counsel.

(19) Counsel states by affidavit that he fully examined the trial court record and transcript while preparing for appeal. In reviewing the case for appeal, counsel did not find, nor did he believe, that there were any valid issues to be raised other than the issue he included in the appeal. Counsel states that he did not include the sentencing issues raised in Defendant's motion for postconviction relief because controlling Delaware case law did not support those arguments.

(20) Again, the Court finds that Defendant has failed to show that counsel's performance in representing Defendant on appeal was deficient. Other than Defendant's generalized claim that "counsel failed to raise all potential errors on appeal," the only specific grounds for appeal Defendant identifies that counsel erroneously failed to raise are the sentencing issues included in this motion and "issues of ineffective assistance of counsel."

(21) Defendant does not specify what issues of ineffective assistance of counsel he believes should have been raised on direct appeal. However, it is well settled that the Supreme Court will not consider claims of ineffective assistance of counsel for the first

time on direct appeal if they were not raised to the trial court below.<sup>11</sup> Defendant did not raise any claims of ineffective assistance of counsel at trial. Therefore, the Supreme Court would properly have refused to hear them on direct appeal. As a result, the Court cannot find that counsel was ineffective by failing to include such issues on direct appeal.

(22) Defendant also claims that counsel should have raised the “sentencing matters, more fully addressed in Defendant’s motion.” The Court must assume that Defendant refers to the second and third grounds raised in his motion for postconviction relief. As discussed in detail below, the Court finds that those issues are without merit. As such, even if it were to accept that counsel’s failure to include those issues in his direct appeal of Defendant’s conviction did not meet reasonable professional standards of behavior, the Court finds that Defendant has failed to show that counsel’s error would have affected the outcome of Defendant’s appeal.

(23) Therefore, for the reasons set forth above, the Court finds Defendant’s initial ground for relief, ineffective assistance of counsel, to be without merit.

(24) Defendant claims in his second ground for relief that his sentence represents cruel and unusual punishment. Defendant claims that the sentence imposed for his crimes is so disproportionate to the offenses that it represents clear and manifest cruel punishment. Initially, the Court finds that Defendant’s second ground for relief cannot be considered upon its merits because Defendant failed to raise the issue in the proceedings

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<sup>11</sup> Del. Supr. Ct. R. 8; *Dubross v. State*, 494 A.2d 1265, 1267 (Del. 1985).

leading to the judgment of conviction. Therefore, the ground is barred under Superior Court Criminal Rule 61(i)(3). However, because Defendant claims that such failure constituted ineffective assistance of counsel, the Court will address the issues raised in that context only.

(25) Defendant argues in support of his second ground for relief that Defendant's sentence was grossly disproportionate as applied to his conduct. Defendant states that he "was accused of 'stealing' \$131.00 and supposedly threatened the 'victim' with a knife. This was the same individual who had befriended [Defendant,] had become his roommate, and loaned him money in the past." Defendant claims that sentencing him to forty-eight years in prison for taking \$131 is clearly and manifestly cruel punishment.

(26) Because Defendant's sentence is the result of the application of the habitual offender statute, Defendant essentially argues that 11 *Del. C.* § 4214, the habitual offender statute, is unconstitutional. The Delaware Supreme Court has held that a proportionality analysis is not required for review of a sentence imposed under the habitual offender statute.<sup>12</sup> Accordingly, *Williams* upheld the constitutionality of the statute.<sup>13</sup> As a result, the Court cannot find that counsel erred by failing to raise the above-outlined argument in Defendant's direct appeal because well-settled Delaware case law clearly

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<sup>12</sup> *Williams v. State*, 539 A.2d 164, 180 (1988), *cert. denied*, 488 U.S. 969 (1988).

<sup>13</sup> *Id.* See also, *Summers v. State*, 2000 WL 1508771 (Del. 2000); *State v. Walton*, 2002 WL 126400 (Del. Super. 2002).

controls the issue. Therefore, the Court finds that Defendant's second ground for relief also is without merit.

(27) Defendant's final ground for relief in support of his motion is that the Court's determination of Defendant's habitual offender status violates due process of law. Specifically, Defendant argues that, because Defendant's sentence was enhanced based upon prior criminal convictions, the fact of those prior convictions must have been alleged in an indictment and proved to a jury beyond a reasonable doubt.

(28) Defendant's third ground for relief also cannot be considered upon its merits because Defendant failed to raise the issue in the proceedings leading to the judgment of conviction. Therefore, the ground is barred under Superior Court Criminal Rule 61(i)(3). However, because Defendant claims that such failure constituted ineffective assistance of counsel, the Court will address the issues raised in that context only.

(29) Defendant concedes that the United States Supreme Court has held that, “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.”<sup>14</sup> This Court has previously determined that *Apprendi* is inapplicable to a proceeding under Delaware's habitual criminal statute.<sup>15</sup>

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<sup>14</sup> *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)(Emphasis added).

<sup>15</sup> *State v. Payne*, 2001 WL 755347 (Del. Super. 2001).

(30) However, Defendant argues that, despite the language of *Apprendi's* holding, the fact of an alleged prior conviction should be a factor that must be alleged in an indictment and proved to a jury beyond a reasonable doubt. Defendant notes that the “fact of a prior conviction” exception to *Apprendi's* rule is based upon the Supreme Court’s decision in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). *Almendarez-Torres* held that there was no constitutional violation where a judge increased a criminal sentence above the otherwise applicable statutory maximum based upon the fact of three earlier convictions for aggravated felonies.<sup>16</sup>

(31) Defendant argues that, while the rule of *Apprendi* incorporates the *Almendarez-Torres* holding, *Apprendi* “went out of its way” to cast the future viability of *Almendarez-Torres* into doubt. Indeed, *Apprendi* expressly declined to revisit the holding in *Almendarez-Torres*, stating, “[e]ven though it is arguable that *Almendarez-Torres* was incorrectly decided, and that a logical application of our reasoning today should apply if the recidivist issue were contested, *Apprendi* does not contest the decision’s validity and we need not revisit it for purposes of our decision today to treat the case as a narrow exception to the general rule we recalled at the outset.”<sup>17</sup>

(32) However, given the holding of *Apprendi*, the Court cannot find that counsel was unreasonable by failing to raise this issue in Defendant’s appeal. Despite

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<sup>16</sup> *Almendarez-Torres v. United States*, 523 U.S. 224 (1998).

<sup>17</sup> *Apprendi*, 530 U.S. at 489-490.

language casting the holding of *Almendarez-Torres* into question, *Apprendi*'s holding specifically states, “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.” As noted above, this Court has previously determined that *Apprendi* is inapplicable to a proceeding under Delaware’s habitual criminal statute. Therefore, the Court cannot find that Counsel’s failure to raise this issue on direct appeal constituted ineffective assistance of counsel. The ground is otherwise procedurally barred pursuant to Rule 61(i)(3).

(33) Defendant also argues in support of his third ground for relief that the Court asked Defendant to admit his prior convictions at the habitual offender hearing without properly advising Defendant of his Constitutional rights. Specifically, Defendant argues that at no time was he advised of his Constitutional right against self-incrimination and his admissions as to the prior guilty pleas were the basis for the determination of his prior convictions.

(34) Review of the transcripts of Defendant’s habitual offender hearings conducted on November 21, 1997 and December 19, 1997 do not support Defendant’s allegations. Those transcripts reveal that, when questioned, Defendant actually denied part of his former convictions.<sup>18</sup> Instead, the Court clearly made its own findings as to his

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<sup>18</sup> Sent. Tr. of Nov. 21, 1997 at 6-8.

habitual offender status based upon its review of the record and guilty plea forms signed by Defendant.<sup>19</sup>

(35) The Court cannot find that any error was committed by the Court in determining the existence of prior convictions in order to designate Defendant a habitual offender pursuant to the statute. This Court has previously determined that there is no requirement for witnesses or other evidence to be presented to establish habitual offender statute. Mere documentary evidence, if sufficiently compelling, may be the sole basis for the Court to make the requisite findings to support a defendant's habitual offender status.<sup>20</sup>

(36) It follows that the Court cannot find that counsel was ineffective by failing to raise this issue on Defendant's direct appeal, as it is clearly without merit. Again, the Court finds that the issue is otherwise procedurally barred pursuant to Rule 61(i)(3). Therefore, the Court finds that Defendant's third and final ground for postconviction relief, that his habitual offender determination violated due process, is without merit.

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<sup>19</sup> Sent. Tr. of November 21, 1997 at 7-17; Sent. Tr. of Dec. 19, 1997 at 7-17.

<sup>20</sup> *Hembree v. State*, 1997 WL 33103 (Del. 1997); *Stone v. State*, 1994 WL 276984 (Del. 1994); *Alls v. State*, 1988 WL 26590 (Del. 1988).

In conclusion, the Court finds that all of the grounds in support of Defendant's Motion for Postconviction Relief pursuant to Rule 61 are without merit. Therefore, Defendant's Motion is hereby **DENIED**.

**IT IS SO ORDERED.**

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Peggy Ableman, Judge

oc: Prothonotary