

July 10, 2002

Joseph C. Palmer, Jr.
Sussex Correctional Institution
P.O. Box 500
Georgetown, DE 19947

Stephanie A. Tsantes, Esquire
Department of Justice
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Office of the Public Defender
Mellon Bank Building, 2nd Floor
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RE: *State of Delaware v. Joseph C. Palmer, Jr.*
Def. ID#0011016766
Memorandum Opinion Motion for Postconviction Relief

Dear Mr. Palmer and Counsel:

This is my decision on defendant Joseph C. Palmer, Jr.'s motion for postconviction relief. Palmer was charged by Information on March 12, 2001 with one count of Home Improvement Fraud in violation of 11 *Del.C.* §916(b)(4). Palmer pled guilty to this charge on June 21, 2001. I ordered a presentence investigation and scheduled sentencing for August 10, 2001. When Palmer failed to appear for sentencing, I issued a *capias* for his arrest. Palmer was returned on the *capias* on March 12, 2002. His sentencing was rescheduled for March 22, 2002. The State filed a motion to declare Palmer an habitual offender pursuant to 11 *Del.C.* § 4214(a). I signed the State's habitual offender motion

and sentenced Palmer to two years at Level V on March 22, 2002.

Palmer filed a motion for postconviction relief on April 23, 2002.¹ Palmer took no direct appeal to the Supreme Court. This is Palmer's first motion for postconviction relief and it was filed in a timely manner. Therefore, there are no procedural bars to Palmer's motion for postconviction relief.² Palmer alleges three grounds for relief.

One, Palmer alleges that he was illegally detained and arrested. The gist of this argument is that, in Palmer's view, he could not be charged with home improvement fraud because he only contracted to work on a commercial structure, not a residential dwelling that does fall within the scope of 11 *Del.C.* § 916. Thus, according to Palmer, since what he did could not be home improvement fraud, his detention and arrest were illegal. However, Palmer's allegations are factually incorrect. 11 *Del.C.* § 916(a) defines home improvement as "any alteration, repair, addition, modification or improvement to any dwelling or the property on which it is situated . . ." There is no definition of "dwelling" in Section 916. However, a related statute, 11 *Del.C.* § 917(a)(2), defines a dwelling as "a building which is usually occupied by a person lodging therein at night . . ." This definition is consistent with the definition of "dwelling" in another section of the

¹ The transcripts of Palmer's plea colloquy and sentencing were completed on May 9, and June 13, 2002, respectively. Palmer's attorney, Ruth M. Smythe, filed a response to the allegations in Palmer's motion for postconviction relief on June 21, 2002.

² *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

Delaware Criminal Code.³ The structure that Palmer constructed to work on was, in addition to being a store, also the victim's home, which is sufficient to bring Palmer's actions within the scope of 11 *Del.C.* § 916.

Two, Palmer alleges that he was coerced into entering the guilty plea because he was facing life imprisonment for what, again in his view, was nothing more than a civil dispute. The following excerpts from the plea colloquy make it clear that Palmer was not coerced into entering the guilty plea.

THE COURT: Mr. Palmer, I understand that you want to plead guilty to one charge. That charge is home-improvement fraud. Is that what you want to do?

THE DEFENDANT: Yes.

* * *

THE COURT: Did anybody force you to take this plea?

THE DEFENDANT: No.

THE COURT: Did anybody coerce you into taking this plea?

THE DEFENDANT: No.

THE COURT: Did anybody threaten you into taking this plea?

THE DEFENDANT: No, sir.

Palmer is bound by the sworn answers that he gave during his plea colloquy.⁴

Three, Palmer alleges that his attorney, Ruth M. Smythe, did not provide him with effective assistance of counsel. In order to prevail on this claim, Palmer must meet the two-prong test set forth in *Strickland v. Washington*.⁵ In the context of a guilty plea

³ See 11 *Del.C.* § 471(e).

⁴ *Somerville v. State*, 730 A.2d 629, 632 (Del. 1997).

⁵ 466 U.S. 668, 1045 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

challenge, *Strickland* requires a defendant to show that: (1) counsel's representation fell below an objective standard of reasonableness; 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 pled guilty and would have insisted on going to trial. Palmer alleges that Smythe was ineffective because, due to her alleged unfamiliarity with business practices, she did not recognize that this was a civil dispute, not a criminal matter. The basis for this, in Palmer's view, is that what he did cannot constitute home improvement fraud. I have already considered this argument and concluded that it is without merit. Therefore, there is no basis for Palmer's ineffective assistance of counsel claim.

For the reasons set forth herein, Palmer's motion for postconviction relief must be denied.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

ESB/cv

cc: Prothonotary