July 3, 2002

N440
Lamonte D. Barham
Sussex Correction Institution
P. O. Box 500
Georgetown, DE 19947

RE: Def. ID# 0108011893 (R1)

Dear Mr. Barham:

On May 10, 2002, you filed a Motion for Postconviction Relief as to the guilty pleas you entered on January 10, 2002. After reviewing the record and the submissions under Rule 61(g), I am satisfied that a hearing is not necessary and that your Motion should be dismissed.

In your Motion, you cite three reasons as to why the Court should grant you relief. The first is that your arrest warrant was defective; second, that there was no basis for a guilty plea; and third, that your attorney was ineffective as to not pursuing the alleged defect in the warrant and for allowing you to plead guilty.

Basically, you complain that the probable cause warrant for your arrest for trafficking in cocaine stated 20 ounces of cocaine was seized from you. You complain that Mr. Callaway did not investigate this error when the Medical Examiner's Report showed that 17.43 grams of cocaine was seized. You complain that by pleading guilty to 20 ounces of cocaine that you did not have in your possession, there was a mistake as to the basis for the plea.

Procedural Bars:

I find that there are no procedural bars. This is your first Motion for Postconviction Relief and it is grounded in ineffective assistance of counsel.

On January 10, 2002, you were scheduled to have a hearing on a Motion to Suppress the evidence seized from you by the police. Mr. Callaway reports in his Rule 61(g) submission to the

Court that the 20 ounces of cocaine mentioned in the probable cause warrant for trafficking was an error. The police report which is provided by the State and given to you in October, 2001 indicated that 20 grams of cocaine were alleged to have been seized from you. On November 1, 2001, your attorney mailed you a copy of the Medical Examiner's Report which found the cocaine actually weighed 17.43 grams. You were charged with trafficking in cocaine which only requires 5 grams of cocaine to be in your possession for a conviction. Trafficking in cocaine carries a minimum mandatory sentence of three (3) years. You were also charged with possession with the intent to deliver cocaine and there was a question whether or not you had an out-of-state conviction for a Title 16 type offense (i.e. drug offense). The State believed that you had such a conviction and was pursuing confirmation of same at the time of the suppression hearing. If you were convicted for possession with the intent to deliver cocaine and had a prior Title 16 offense, then you faced a five-year minimum mandatory sentence for possession with the intent to deliver cocaine charge, if convicted.

This was known at the time of the suppression hearing and the negotiations with the State which led to your guilty plea.

In your Rule 61(g) submission, you admit you had 17.43 grams of cocaine in your possession and continue to argue about how unfair your bond was due to the error and that you were forced into the plea due to the mistake in the police report. You do not deny Mr. Callaway's submission under Rule 61(g) that his office mailed a copy of the medical examiner's report to you in November. That report showed 17.43 grams, the same amount you admit you had.

I have reviewed the transcript of the guilty plea and it is clear from that transcript that you knew your circumstances and you knew your worst case scenario might be eight (8) years minimum mandatory if convicted on the original charges (the above 5 years plus 3 for trafficking). You acknowledged that you wished to give up your right to have a suppression hearing and trial and plead guilty with a recommendation from the State and the defense that you be incarcerated at Level V, but that that sentence would be suspended upon the completion of the Key Program. You were aware that your attorney was prepared to pursue the legality of the seizure of the cocaine, but that if you lost the suppression hearing the State was taking the case to trial where you faced a minimum of eight years. You made the "business decision" to waive your right to have a suppression hearing and accept the State's plea offer.

The "20 ounces" mistake in the probable cause affidavit had nothing to do with the guilty plea to possession with the intent to deliver. The quantity of drugs is not the basis for a possession with the intent to deliver offense. The quantity of drugs is an element in trafficking, but you did not plead to trafficking.

I asked you if you were guilty of the offense of possessing cocaine with the intent of transferring or delivering it to another person. You reported that you were guilty of that offense.

You also reported that you were satisfied with your lawyer, had had sufficient time to consult with him about the nature and consequences of the plea, and had no complaints concerning Mr. Callaway. You also reported that neither Mr. Callaway nor anyone else was forcing you to enter the plea, and that the decision to enter the plea was your personal decision. You reported to me that you understood the consequences of giving up your suppression and trial rights. All of your communications with the Court were under oath.

Based upon the above summary, I find that your allegations contained in the Rule 61 Petition concerning the "20 ounce mistake" had no bearing on your decision to enter the guilty plea and that your claims are not credible. Actually, based on the transcript of the proceedings before the Court, I believe your application borders on the frivolous.

Motion for Postconviction Relief is denied.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary
E. Stephen Callaway, Esquire
Department of Justice