April 15, 2002

Charles Conner
DCC
P.O. Box 500
Smyrna, DE 19977

RE: State v. Conner, Def. ID# 0103017776

DATE SUBMITTED: February 8, 2002

Dear Mr. Conner:

Pending before the Court are the motions of defendant Charles Conner ("defendant") for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61") and for modification of sentence pursuant to Superior Court Criminal Rule 35(b). This is my decision denying both motions.

FACTS

On August 8, 2001, defendant pled guilty to a charge of rape in the third degree. After being placed under oath, defendant affirmed that he was satisfied with trial counsel's legal representation and he had no complaints about that representation. A review of the plea colloquy makes clear that defendant freely and voluntarily entered into the plea agreement and that he well understood that the sentence recommendation was for seven (7) years at Level 5, and after serving two (2) years at Level 5, with credit

for time served, the balance is suspended for three (3) years at Level 3 probation, followed by two (2) years at Level 2 probation. Defendant further affirmed in his Truth-In-Sentencing Guilty Plea Form that he had not been promised anything that was not stated in the written plea agreement. The Court imposed the recommended sentence on August 8, 2001.

Defendant did not appeal. Defendant previously has filed three requests for sentence modifications, all of which have been denied. Now pending, as noted earlier, are motions for postconviction relief and for modification of sentence.

DISCUSSION

a) Rule 61 Motion

The basis of defendant's Rule 61 motion is that trial counsel was ineffective. He asserts as follows. Trial counsel never called any witnesses. Trial counsel never checked to see if the crime happened in the State of Delaware; defendant maintains it did not. Trial counsel promised defendant that if he signed the plea agreement, he would be out in a year on Work Release. Trial counsel did not fight for him; defendant had no criminal record and trial counsel would not ask for house arrest.

There are no procedural bars to this motion, so I will address the merits.

I turn to Somerville v. State, Del. Supr., No. 329, 1997, Holland, J. (October 23, 1997) at 4-6, for setting forth the standard to apply to an ineffective assistance of counsel claim:

> To prevail on his ineffective assistance of counsel claim, [defendant] ... must meet the two-prong test of

> Strickland v. Washington, 466 U.S. 668 (1984). Albury v. State, Del. Supr., 551 A.2d 53, 58 (1988) ... 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'"; Albury v. State, 551 A.2d at 58 ...; 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.'" Albury v. State, 551 A.2d 53, 60 .....
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> Under the Strickland test, "appellate ... review is subject to a strong presumption that counsel's conduct was professionally reasonable." Albury v. State, 551 A.2d at 59 .... 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." Id. In the context of a guilty plea challenge, the defendant must demonstrate to the appellate court "`that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" Albury v. State, 551 A.2d at 60....

Defendant asserts that trial counsel failed to call any witnesses. Since defendant entered into a plea, there was no basis for calling a witness. Furthermore, the assertion is conclusory, and the claim fails for that reason alone.

Defendant alleges that trial counsel failed to investigate the location of the crime, and then throws out that it did not occur in Delaware. However, a review of the plea colloquy shows that defendant, in affirming he committed the crime as alleged in the indictment, acknowledged the crime did occur in Delaware. Defendant is bound by his representations under oath. This claim fails.

In this case, the Truth-In-Sentencing Guilty Plea Form, the Plea Agreement, and defendant's colloquy establish that he voluntarily entered into the plea and that he was satisfied with his attorney's representation. Defendant is bound by these

representations. Martin v. State, Del. Supr., No. 381, 1994, Hartnett, J. (April 28, 1995); Hickman v. State, Del. Supr., No. 298, 1994, Veasey, C.J. (October 11, 1994); Wright v. State, Del. Supr., No. 284, 1992, Moore, J. (September 24, 1992); Wright v. State, Del. Supr., No. 400, 1991, Walsh, J. (February 20, 1992).

Defendant's contention that he was promised he would be placed on work release within a year is an indirect assertion he was coerced into entering the plea. The record does not support this contention. The documents which defendant signed and his assertions under oath establish that no one promised him that he would be placed in Work Release within a year. Defendant is bound by these representations. Martin v. State, supra. This claim fails.

Defendant argues that trial counsel did not attempt to negotiate house arrest for him. I will consider this to be an indirect coercion argument, also. Again, defendant is bound by his assertions that he understood the plea agreement, was willingly entering it, and was satisfied with his attorney's representation of him. This claim fails.

For the foregoing reasons, the Rule 61 motion is denied.

b) Rule 35 Motion

Defendant, for the fourth time, seeks a modification of his sentence. The motion is time-barred and repetitious, and the Court denies it for those reasons. Rule 35(b).

CONCLUSION

For the foregoing reasons, the Court denies defendant's Rule 61 and Rule 35(b) motions.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
E. Stephen Callaway, Esquire
Paula Ryan, DAG