

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

STATE OF DELAWARE)	
)	
v.)	ID# 9507008172
)	
LUIS MORALES,)	
)	
Defendant.)	

Submitted: July 10, 2001
Decided: October 31, 2001

OPINION

On Defendant Luis Morales' Motion for Postconviction Relief. Denied.

James A. Rambo, Deputy Attorney General, Department of Justice, Wilmington, Delaware. Attorney for State.

Luis Morales, Delaware Correctional Institution, Smyrna, Delaware. Pro Se Defendant.

CARPENTER, J.

Luis Morales (hereinafter “defendant”) has filed this *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. The State filed a Response and defendant’s trial attorney, Joseph M. Bernstein, filed at the request of this Court an affidavit directed at the defendant’s claims of ineffective assistance of counsel. Subsequently, defendant also filed a “Reply” and a “Motion for Rebuttal.” This Court has considered all of the submissions and defendant’s Motion for Postconviction Relief is **DENIED**.

I. FACTS

On two separate occasions, June 19, 1995 and July 12, 1995, Thomas Jannuzio, an undercover detective for the Wilmington Police Department, purchased heroin from defendant at defendant’s apartment located at 101 N. Van Buren Street, Wilmington, Delaware.¹ On those dates, Detective Jannuzio purchased three bags of heroin in exchange for forty dollars. On July 12, 1995, after Detective Jannuzio purchased heroin from the defendant, his partner, Detective Rodriguez observed the defendant leave his apartment and drive away in his car. Wilmington Police officers assisting the detectives subsequently stopped the defendant and informed him that he was being arrested for selling heroin to an undercover police officer. When police

¹ A more detailed recitation of the facts are set forth in the Delaware Supreme Court’s decision in *Morales v. State*, Del. Supr., 696 A.2d 390 (1997).

inspected the contents of the defendant's wallet, a marked twenty-dollar bill, which Detective Jannuzio had previously used to purchase heroin in defendant's apartment was located. After seizing the marked money, Detective Rodriguez gave *Miranda* warnings to the defendant and requested consent to search the defendant's apartment. The defendant agreed and signed a consent search form.

While searching defendant's apartment, the detectives found four small bags of heroin hidden inside a wall, one small bag on the floor of the same room, and yet another small bag on the bed in another room. After the search was complete, the defendant informed the detectives that he was a drug user and that he sold drugs to support his drug addiction.² Defendant was charged with two counts of Delivery of Heroin, one count of Possession with Intent to Deliver Heroin, two counts of Maintaining a Dwelling, one count of Possession of a Hypodermic Needle and Syringe, and one count of Conspiracy Second Degree.

² *Id.*

Joseph M. Bernstein, (hereinafter “counsel”) was assigned by the Superior Court of Delaware to represent the defendant. A jury subsequently convicted the defendant of all the above named charges. Thereafter the State filed a motion to have the defendant sentenced as an habitual offender, pursuant to 11 *Del. C.* § 4214(b).³ The trial court found the State had met its burden under the statute and the defendant was sentenced accordingly.

On appeal to the Supreme Court of Delaware, the Court considered two claims by the defendant: (1) that the State’s evidence was insufficient as a matter of law to sustain his conviction of possession with intent to deliver and (2) whether guilty pleas entered in conjunction with plea bargains made in other jurisdictions and documented

³ 11 *Del. C.* § 4214 is the Habitual Criminal statute in Delaware and sub-section (b) states that “[a]ny person who has been 2 times convicted of a felony or an attempt to commit a felony hereinafter specifically named, under the laws of this State, and/or any other state . . . and who shall thereafter be convicted of a subsequent felony hereinafter specifically named, or an attempt to commit such specific felony, is declared to be an habitual criminal, and the court in which such third or subsequent conviction is had, in imposing sentence, shall impose a life sentence upon the person so convicted unless the subsequent felony conviction requires or allows and results in the imposition of capital punishment.”

as such only by indictments and docket sheets was sufficient to provide the basis for a defendant to be adjudicated an habitual offender.⁴ Defendant's convictions were affirmed by the Court, but his sentence was reversed. The matter was remanded for resentencing, which occurred on October 3, 1997.⁵

Defendant has now filed this Motion for Postconviction Relief basically asserting three claims. First, the defendant claims that his trial attorney failed to obtain an interpreter for his trial and because of that failure, he was subject to the ineffective assistance of counsel. Second, the defendant asserts that his attorney did not raise search and seizure objections in regards to police actions taken on the day of his arrest. Lastly, the defendant claims that his attorney failed to raise an issue of misidentification by the arresting officers.

II. PROCEDURAL MATTERS

⁴ *Morales* at 393.

⁵ *Morales* at 395.

When considering a Motion for Postconviction Relief, the Court must first apply the procedural bars of Rule 61(i) before considering the merits of the individual claims.⁶ To protect the integrity of the procedural rules, ordinarily the Court should not consider the merits of a postconviction claim where a procedural bar exists.⁷ Under Rule 61(i)(1), a motion for postconviction relief may not be filed more than 3 years after judgment of conviction is final or 3 years after a newly recognized retroactively applicable right is recognized by the Supreme Court of Delaware or the United States Supreme Court.⁸ A conviction is final for purposes of postconviction review: (a) for defendant who takes a direct appeal of the conviction, when the direct appeal process is complete (the date of the issuance of the Supreme Court mandate) or (b) for defendant who does not take a direct appeal, when the time for direct appeal has expired (30 days after sentencing); or (c) if the United States Supreme Court grants certiorari, when that Court's mandate issues.⁹ The three-year limit is

⁶ *Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990) (citing *Harris v. Reed*, 489 U.S. 255, 265 (1989)); see also *Bailey v. State*, Del. Supr., 588 A.2d 1121, 1127 (1991); *Flamer v. State*, Del. Supr., 585 A.2d 736, 745 (1990); *Winn v. State*, Del. Supr., No. 257, 1992, Moore, J. (Feb. 9, 1993) (ORDER); *Webster v. State*, Del. Supr., No. 65, 1992, Horsey, J. (April 1, 1992)(ORDER).

⁷ *State v. Gattis*, Del. Super., Cr.A. No. IN90-05-1017, Barron, J. (Dec. 28, 1995)(citing *Younger v. State*, 580 A.2d at 554; *Saunders v. State*, Del. Supr., No. 185, 1994, Walsh, J. (Jan. 13, 1995)(ORDER); *Hicks v. State*, Del. Supr., No. 417, 1991, Walsh, J. (May 5, 1992) (ORDER).

⁸ Super. Ct. Crim. R. 61(i)(1).

⁹ *Jackson v. State*, Del. Supr., 654 A.2d 829, 832-33 (1995).

jurisdictional in nature and may not be enlarged.¹⁰

Defendant's Motion for Postconviction Relief was filed with this Court on October 10, 2000. The Supreme Court's mandate following the defendant's direct appeal was issued on July 18, 1997 and the defendant was resentenced on October 3, 1997. Therefore, the defendant's motion is procedurally barred pursuant to Rule 61(i)(1) as it was filed more than three years after his direct appeal process was complete, and more than three years beyond the final action in the trial court.¹¹

Nonetheless, a procedural bar under Super. Ct. Crim. R. 61(i)(1) may potentially be overcome by Rule 61(i)(5). Rule 61(i)(5) states that

[t]he bars to relief in paragraphs (1)(2) and (3) of Rule 61(i) shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.¹²

¹⁰ *Robinson v. State*, Del. Supr., 584 A.2d 1203, 1204 (1990).

¹¹ *Jackson v. State*, Del. Supr., 654 A.2d 829, 832-33 (1995).

¹² Super. Ct. Crim. R. 61(i)(5).

The Rule 61(i)(5) fundamental fairness exception . . . is a narrow one and has been applied only in limited circumstances.”¹³ It is under this standard that this Court will review the ineffective assistance of counsel claims.

III. INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS

Proof of an ineffective assistance of counsel claim “requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial.”¹⁴ A movant must show both “that counsel’s representation fell below an objective standard of reasonableness,” and “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.”¹⁵

A. Failure to Obtain a Translator.

Defendant initially asserts that counsel failed to obtain a translator for the defendant, and this lack of translation assistance made it difficult for him to appreciate

¹³ *Younger v. State*, Del. Supr., No. 87, Walsh, J. (May 3, 1991)(ORDER) at 3.

¹⁴ *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

¹⁵ *Albury v. State*, Del. Supr., 551 A.2d 53, 58 (1988) (quoting *Strickland v. Washington*, 466 at 688, 694.).

all of the matters that occurred during his trial.¹⁶ However, counsel stated in his affidavit to this Court that the defendant was quite capable of communicating with him in English and he always responded appropriately to his questions in English.¹⁷

¹⁶ Defendant's Motion at 13.

¹⁷ Bernstein affidavit at 1.

In addition, the State asserts that the defendant's claim must fail because even if he did not fully comprehend his attorney's questions or the events during trial, his possession of the marked bill is overwhelming evidence of the commission of the alleged crime.¹⁸ Furthermore, the State noted that Defendant's Motion for Postconviction Relief demonstrates his ability to communicate to this court in the English language.

Based upon these facts, this Court finds the defendant's allegation of ineffective assistance with respect to counsel's failure to secure a translator, does not rise to the level required to sustain an ineffective assistance of counsel claim. Stated differently, at no time during trial did the defendant's interactions with counsel or the Court provide any indication that he was having difficulty understanding the proceedings or assisting his counsel. A translator was not requested simply because one was not needed.

B. Failure to Object to the Search and Seizure.

¹⁸ State's Response at 2.

Defendant next asserts that counsel essentially failed to challenge Detectives Rodriguez and Jannuzio's search and seizure on July 12, 1995. The evidence was clear that the defendant had in his possession a marked bill used by Detective Rodriguez during his undercover transaction with the defendant. Defendant's possession of this marked bill evidenced his involvement in the drug transaction that day. Immediately after discovering the marked bill, the defendant was given *Miranda* warnings and then signed a consent form, giving the detectives permission to search the apartment. It was in the defendant's apartment that the detectives found four additional bags of drugs. After thoroughly reviewing the facts of the events leading up to the search of the apartment, Counsel did not believe there were any issues relating to the search of the first floor apartment which he could raise in good faith.¹⁹ When evaluating counsel's conduct, this Court must indulge "a strong presumption that counsel's conduct was professionally reasonable."²⁰ "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable[.]"²¹ Based on the unique facts of this case, this Court cannot find that Counsel's decision to not object to the search of the apartment

¹⁹ Bernstein affidavit at 2.

²⁰ *Albury v. State*, Del. Supr., 51 A.2d at 59 (citing *Strickland v. Washington*, 466 U.S. 668, 689 (1984)).

²¹ *Strickland* at 690.

was inappropriate.

C. The Potential Misidentification of Defendant by the detectives.

Defendant's last claim asserting ineffective assistance of counsel, contends that Counsel failed to address the issue of potential misidentification by the detectives. Defendant claims his brother is the individual responsible for selling the drugs from the apartment and that the drugs found belonged to his brother. Counsel stated in his affidavit that he did not investigate any potential misidentification because the defendant failed to advise him that there was a close resemblance to his brother.²² In addition, this was a hand-to-hand "buy," by the undercover detective, in which the defendant was apprehended shortly thereafter. The detective identified the defendant as the individual with whom he had transacted the drug deal and the defendant admitted to his involvement. Until now, there has been no assertion of misidentification. Counsel cannot be held to have been ineffective when his client fails to provide critical information necessary for him to act. As such, this Court finds no merit to this claim.

IV. CONCLUSION

This Court finds that the ineffective assistance of counsel claims are without merit and fail to rise to the level of fundamental unfairness. As such, the defendant's

²² Bernstein affidavit at 3.

Motion for Postconviction Relief is hereby **DENIED**.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.

cc: Original to Prothonotary
James A. Rambo, Esquire, Deputy Attorney General
Joseph M. Bernstein, Esquire
Luis Morales
Office of Investigative Services