

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. 9912018233  
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 ANTOINE M. MURRAY, )  
 )  
 Defendant. )  
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Submitted: September 4, 2001  
Decided: September 7, 2001

**ORDER**

UPON DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF.  
**SUMMARILY DISMISSED.**

This 7<sup>th</sup> day of September, 2001, upon consideration of the Defendant's Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 and the record in this case, it appears that:

(1) On December 12, 2000, Defendant, Antoine M. Murray, pleaded guilty to Possession of a Controlled Substance within 300 Feet of a Park or Recreation Area , Use of a Dwelling for Keeping Controlled Substances, Conspiracy Second Degree, and two counts of Endangering the Welfare of a Child. On March 9, 2001, the Court sentenced

Defendant for Possession with 300 Feet of a School or Recreation Area to eight years Level 5 incarceration, suspended after fifteen months for Level 4 residential drug treatment, suspended upon successful completion of drug treatment for the balance of the sentence at Level 3 probation. On the remaining charges, the Court sentenced Defendant to Level 5 incarceration, suspended for probation.

(2) Defendant has now filed a Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. In support of his motion, Defendant lists four grounds for relief. First, Defendant claims that his attorney failed to file a motion to suppress evidence and “suppression of favorable evidence.” The Court interprets Defendant’s claim as one of ineffective assistance of counsel. Second, Defendant alleges that he was denied bail while awaiting sentencing. Third, Defendant claims that the terms of his plea agreement were unfulfilled. Finally, Defendant alleges ineffective assistance of counsel, again claiming that his defense counsel failed to have evidence suppressed.

(3) This is Defendant’s first Motion for Postconviction Relief and the Court finds that none of the procedural bars listed in Super. Ct. Crim. R. 61(i) are applicable. Therefore, the Court may consider the merits of Defendant’s motion. However, the Court finds that Defendant’s second ground for relief does not fall within the scope of Rule 61, which governs an application, “seeking to set aside a judgment of conviction . . . on the ground that the court lacked jurisdiction or on any other ground that is a sufficient factual and legal basis for a collateral attack upon a criminal conviction . . . .” Defendant’s claim that

he was denied bail for the period of time between his guilty plea and his sentencing falls outside the scope of Rule 61.

(4) Both Defendant's first and third grounds for relief raise nearly identical claims of ineffective assistance of counsel. Defendant claims that he requested that his defense attorney file a motion for a suppression hearing and that the request was ignored. Defendant claims that the case would have had a different outcome had certain evidence been suppressed.

(5) A criminal defendant who raises an allegation of ineffective assistance of counsel must show that the attorney's conduct did not meet reasonable professional standards so that such conduct was prejudicial to the defendant. *Strickland v. Washington*, 466 U.S. 668 (1984). A defendant must be able to show that "[t]here is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." *Id.* at 669.

(6) Defendant pleaded guilty to the charges set forth above. By pleading guilty, Defendant gave up his trial rights, including the right to present evidence on his own behalf and to challenge the charges against him. Therefore, even if the Court accepted Curtis' allegations regarding his attorney's conduct in failing to file a motion to suppress as true, Curtis has not shown that the result of his proceedings would have been different. Therefore, the Court finds that Defendant's claims of ineffective assistance of counsel based upon his attorney's failure to file a motion to suppress evidence are without merit

(7) Defendant's remaining ground in support of his motion is "unfulfilled plea agreement." Defendant claims that he signed a plea agreement for fifteen months Level 5 incarceration with an effective date of sentencing of December 29, 1999. Defendant claims that, as a result, he believed he would be released immediately from custody due to his credit for time already served. Upon review of Defendant's guilty plea form and the transcript of his plea colloquy, the Court cannot find that Defendant was misled by the Court or by defense counsel as to the terms of his sentence and that Defendant entered his plea knowingly and voluntarily. To the extent that Defendant argues that he is being held illegally at Level 5, the Court finds that such claim falls outside the scope of Rule 61.

Therefore, for the foregoing reasons, the Court finds that it plainly appears from Defendant's Motion for Postconviction Relief and the record of prior proceedings in this case that Defendant is not entitled to relief. The motion is, therefore, **SUMMARILY DISMISSED.**

**IT IS SO ORDERED.**

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Carl Goldstein, Judge

oc: Prothonotary  
cc: Antoine M. Murray