IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	**ID No: 9409002147**
	)	
BRIAN STECKEL,	)	
	)	
Defendant.	)	

Submitted: May 7, 2001
Decided: August 31, 2001

MEMORANDUM OPINION

On Defendant Brian Steckel's Motion for Postconviction Relief.
Denied.

Loren C. Meyers, Esquire, Department of Justice, 820 N. French Street, Wilmington, Delaware 19801. Attorney for the State of Delaware.

Joseph M. Bernstein, Esquire, and John P. Deckers, Esquire, 300 Delaware Avenue, Suite 1130, Wilmington, Delaware 19801. Attorneys for Brian Steckel.

CARPENTER, J.

On October 2, 1996, Brian Steckel (the "Defendant" or the "Petitioner") was

convicted of three counts of Murder First Degree, two counts of Burglary Second Degree, one count of Unlawful Sexual Penetration First Degree, one count of Unlawful Sexual Intercourse First Degree, one count of Arson First Degree, and one count of Aggravated Harassment, all stemming from the rape and murder of Sandra Lee Long on September 2, 1994. After a penalty hearing was conducted before the same jury that convicted the Defendant, the jury recommended the death penalty by a vote of eleven to one on October 17, 1996. After consideration of the factors in 11 *Del. C.* §4209, this Court concurred with the jury's recommendation and imposed a sentence of death for each of the three convictions of Murder First Degree.[1] On an automatic and direct appeal, the Delaware Supreme Court affirmed both the convictions and the death sentences.[2]

On October 21, 1998, a hearing was held whereupon the Defendant stated his intent to pursue Superior Court Criminal Rule 61 remedies, arguing ineffective assistance of counsel. On November 18, 1998, new counsel was appointed to represent the Defendant in regards to his postconviction remedies. On December 16,

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[1] *State v. Steckel*, Del. Super., Cr. A. Nos. IN96-06-1760, 1761, 1763, 1765-1770, 1773, Carpenter, J. (Jan. 8, 1997).

[2] *Steckel v. State*, Del. Supr., 711 A.2d 5 (1998).

1998, a skeleton form of the Defendant's Motion for Postconviction Relief was filed, and an Amended Motion was filed on March 16, 1999 ("Amended Motion"). On January 21, 2000, the Court permitted an expansion of the record to include various expert reports from John S. O'Brien, II, M.D., J.D., Peter F. Hampl, D.D.S., and Walter I. Hofman, M.D., and an affidavit filed on February 28, 2000 by the Defendant's trial counsel. On December 20, 2000 and January 2, 2001, the Court held evidentiary hearings on the Rule 61 claims and allowed supplemental briefing. For the reasons set forth below, the Court denies the Defendant's Motion.

FACTS

A comprehensive statement of the facts is contained within this Court's findings after the penalty hearing[3] and within the Delaware Supreme Court's opinion affirming the Defendant's convictions and death sentences.[4] A summary of those facts as well as any additional facts necessary to decide this motion follow.

Around noon on September 2, 1994, the Defendant knocked on Sandra Lee Long's ("Ms. Long") apartment door located on the ground floor of the Driftwood

[3] *See State v. Steckel*, Del. Super., Cr. A. Nos. IN96-06-1760, 1761, 1763, 1765-1770, 1773, Carpenter, J. (Jan. 8, 1997) at 9-11.

[4] *See Steckel v. State*, Del. Supr., 711 A.2d 5, 7-8 (1998).

Club Apartments. Gaining entrance to her apartment under the pretext of using her phone, once inside, he proceeded to savagely physically and sexually attack Ms. Long. In order to conceal his crime, the Defendant set the apartment on fire, locking the door behind him as he left. The fire engulfed the apartment and while passerbys made heroic efforts to save Ms. Long, she was ultimately burned alive in the fire.

That same afternoon, *The News Journal* received an anonymous male call who claimed responsibility for Ms. Long's death and named Susan Gell ("Gell") as his next victim. Gell was eventually contacted by Wilmington police and after explaining that she had been receiving threatening, sexual calls, they were ultimately traced to the Defendant. On the morning of September 3, 1994, the Defendant was apprehended and the police conducted several interviews during which the Defendant confessed to the rape and murder of Ms. Long.

STANDARD OF REVIEW

A claim of ineffective assistance of counsel is governed by the two-part test set forth in *Strickland v. Washington*.[5] First, the Defendant must show that his counsel's representation fell below an "objective standard of reasonableness."[6] A strong

[5] 466 U.S. 668 (1984).

[6] *State v. Dawson*, Del. Super., 681 A.2d 407, 415 (1995)(*quoting Strickland*, 466 U.S. at 687).

presumption exists that the counsel's representation was professionally reasonable.[7] *Strickland* mandates that when viewing the counsel's representation, this Court must endeavor to eliminate the "distorting effects of hindsight."[8] "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable."[9] Secondly, the Defendant must prove actual prejudice.[10] Prejudice is defined as "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different."[11] For this prong, the Defendant must make concrete allegations of actual prejudice and substantiate them

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[7] *Dawson*, 681 A.2d at 415 (*citing Flamer v. State*, Del. Supr., 585 A.2d 736, 753 (1990)).

[8] *Dawson*, 681 A.2d at 415 *(quoting Strickland*, 466 U.S. at 689).

[9] *Strickland*, 466 U.S. at 690.

[10] *Dawson*, 681 A.2d at 415 (*citing Strickland*, 466 U.S. at 694).

[11] *Dawson*, 681 A.2d at 415 (*quoting Strickland*, 466 U.S. at 694).

or otherwise risk summary dismissal.[12]

DISCUSSION

[12] *State v. Mason*, Del. Super., Cr. A. No. IN93-02-0279-R1, Barron, J. (April 11, 1996)(Mem. Op.) at 7; *Dawson*, 681 A.2d at 415.

In his Amended Motion, the Defendant initially asserted twelve grounds for postconviction relief under Rule 61, arguing ineffective assistance of counsel claims. However, in his most recent brief filed after the evidentiary hearings, the Defendant limited his argument to a single issue, abandoning the other claims. In essence, the Defendant's claim is that his trial attorneys were ineffective in the penalty phase in failing to present as a mitigating factor, evidence that he suffered from a psychological disorder, which made him unable to distinguish between fantasy and reality and which may have motivated him to exaggerate the severity of his conduct. The Defendant asserts that this argument was found in Grounds Three[13] and Twelve[14] of the original

[13] According to the Amended Motion, the Defendant argued in Ground Three that defense counsel accepted the veracity of the Defendant's "confessions" to the police at face value and did not conduct a reasonable pretrial investigation in order to develop inconsistencies between the Defendant's "confessions" and the other physical and testimonial evidence in the case. In addition, the Defendant asserted nine subcategories for this ground. In subcategory (B), he claimed that defense counsel failed to investigate the possibility that the Defendant had a psychological or psychiatric disorder, which rendered the Defendant unable to distinguish between morbid fantasy and reality, and which may have motivated the Defendant to falsely

twelve grounds.

Despite the State's argument to the contrary, the Court will not require an amendment to the pleadings based on this condensed, single claim. The Court finds that this limited claim was sufficiently incorporated into Grounds Three and Twelve and during the process of briefing over the past two years, defense counsel has narrowed the claims to only those which they discerned actually have merit. The Court believes defense counsel's actions to initially protect and preserve all possible claims and then limit argument to only meritorious claims after the hearing was appropriate.

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confess to the crimes associated with Ms. Long's death.

[14] According to the Amended Motion, the Defendant argued in Ground Twelve that defense counsel ineffectively formulated their strategy in the guilt phase by failing to consider a "guilty but mentally ill" defense, which would have allowed the defense to present psychiatric testimony.

In addition, the Court will not address all twelve grounds since the Defendant, in his post-hearing opening brief, conceded that, with the exception of Grounds Three and Twelve, the other grounds, which related to errors by trial counsel during the guilt phase, would not survive under the prejudice prong of the *Strickland* standard since the evidence that the Defendant actually committed the crimes in question was sufficiently strong.[15] As such, the Court will only address the narrowed claim that incorporates Grounds Three and Twelve that was most recently asserted in the Defendant's post-hearing opening brief.

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[15] In a footnote in his post-hearing opening brief dated April 6, 2001, the Defendant stated:

> The remaining claims in the Amended Rule 61 Motion all relate to alleged errors by trial counsel in the guilt phase of the case. After reviewing the entire record in this case, including the evidence developed in this post-conviction proceeding, defense counsel agrees that the evidence hat [sic] Steckel actually committed the crimes in question is sufficiently strong as to preclude a finding, under *Strickland*, that Steckel was "prejudiced" by any of the alleged errors by trial counsel.

The Defendant's argument is based primarily on the testimony and report of John S. O'Brien, M.D., J.D.,[16] who opined that the Defendant had a "narcissistic personality disorder", which drove him to exaggerate the degree of his criminal conduct in order to draw attention to himself. Dr. O'Brien felt that the Defendant's trial attorneys should have brought the exaggerated evidence to the attention of the forensic practitioners that they consulted and should have presented this disorder to the jury during the penalty phase, which may have effected the jury's recommendation for the death penalty. In making his conclusions, he reviewed various materials and briefly met the Defendant on November 17, 1999. He testified that when he went to see him, the Defendant declined to see him but the guards felt that it would be appropriate if the Defendant communicated that directly to the doctor. As such, he stated that the Defendant was brought into his presence with several guards and made solicitous comments regarding sexual activity with him. These comments were followed by coughing and laughing. While Dr. O'Brien stated in his report, dated January 12, 2000, that the Defendant warrants a personality disorder diagnosis and clearly has antisocial personality traits, he also opined that:

> he has very severe Narcissistic Personality Traits associated with grandiose fantasies of a greater degree of criminal activity and

[16] Dr. O'Brien was retained by the Defendant's present counsel.

> aggressiveness than he has been able to be factually associated with. Furthermore, these traits occasion him to exaggerate and falsely distort his involvement in prior acts and in this case engage in post arrest behaviors, such as letter writing, which draw further attention to himself and highlight his depiction of himself as a bad and aggressive individual. In my opinion, these traits have led him to falsely report involvement in crimes for which there is no evidence and may have led him to falsely exaggerate or distort the manner and circumstances of his murder of Ms. Long.
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> * * * *
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> Based upon my review of the materials made available to me in connection with Mr. Steckel's case, it is apparent that this feature of his personality disorder was not identified or presented during his trial or sentencing phase, and would have been appropriate and reasonable to have been presented for the purposes of mitigation in order to negate any aggravating effect that Mr. Steckel's highlighted, exaggerated, and/or fantasied criminal behavior may have had in fashioning his sentence.

He stated that the narcissism is what drives the Defendant's showmanship and his desire to draw negative attention to himself.

The Defendant argues that the record is replete of examples provided by the Defendant himself that exaggerate his criminal behavior and portray him in the worst possible light. One example asserted by the Defendant is the inconsistencies in his various confessions to the police. During these four statements to the police, the Defendant confessed to Ms. Long's murder and provided heinous and gruesome details of the crime but at times made inconsistencies as to the physical assault and his own physical conduct. He also provided inconsistent statements in how long he had known the victim, which ranged from ten months to two months to as little as the day

before the murder. He further recounted that he had sexual relations with her twenty times but also made another statement that he never had sexual relations with Ms. Long and only briefly knew her prior to the murder. The Defendant argues that such inconsistencies should have caused his trial counsel to question why the Defendant would admit to acts that were much more heinous than the facts would support and why he would provide several inconsistent and unsubstantiated statements regarding his relationship with the victim.

Another example of exaggerated criminal behavior is the unsubstantiated murders that the Defendant had allegedly committed. The State learned from a variety of sources, including the Defendant's own statements, that he claimed to have killed women in Delaware, Pennsylvania, Maine, Nevada, and Florida, totaling approximately ten people. Except for the death of Ms. Long, the claims were unfounded or unsubstantiated. And, during one of his statements, when the detectives, who knew that the police had a suspect for the murder, confronted him about the murder of a fifteen-year-old girl in Pennsylvania, the Defendant stated "I was just shooting the breeze man, and I was drunk and shit when I was saying that shit." He then stated that he never killed anyone but Ms. Long. When asked about the other people that he had supposedly murdered, he stated, "I don't know my head was so

twisted this morning."[17]

Furthermore, the Defendant argues that the initial autopsy reports provided inconsistent findings that did not substantiate some of the acts admitted by the Defendant and that such findings should have alerted the Defendant's trial counsel to question why the Defendant would portray his acts in a much more heinous way than the evidence supported.

Finally, counsel asserts as another example of the Defendant sensationalizing himself, the 75 letters that he wrote prior to trial to various employees of the Attorney General's Office, including two prosecutors, a judge, the victim's mother and others. They portrayed a horrific picture of the Defendant's view of the murder details as well as threats made to certain individuals.

[17] The Defendant's Second Statement, dated 9-3-94, at 11.

In defense of these ineffective assistance of counsel claims, the Defendant's trial counsel, Jerome M. Capone, Esquire, and Joseph A. Gabay, Esquire, testified at the evidentiary hearings and submitted an affidavit. Jerome M. Capone stated that he met with Dr. Stephen Mechanick, a psychiatrist, before trial in order to investigate whether there was a possible insanity defense or to assist at the penalty phase and mitigation. Dr. Mechanick conducted three interviews with the Defendant, which totaled five hours, and he opined that the Defendant suffered from Attention Deficit Hyperactivity Disorder, Substance Abuse, and Antisocial Personality Disorder. Dr. Mechanick did not believe that these disorders, either individually or jointly, would be sufficient to raise a legal defense. In fact, there was a memo to the Steckel file made by Mr. Capone on August 5, 1996, which stated that after speaking with Dr. Mechanick "regarding the prospect of a 'guilty, but mentally ill' strategy for the guilty phase", Dr. Mechanick felt that the Defendant's antisocial personality traits and the planning of this crime did not fit the statute and he could not support such a position.[18] In addition, Mr. Capone stated that Dr. S. Charles Bean, a neurologist, was also consulted to determine whether there was any brain disfunction to be used as a mitigating factor. As a result of interviews, testing, and review of medical evidence,

[18] This memo was admitted during the evidentiary hearing as State's Exhibit 1 without objection.

Dr. Bean opined that the Defendant suffered from Antisocial Personality Disorder, Learning Disability, and Attention Deficit Disorder.

Mr. Capone stated that their strategy for the penalty phase was to present a tragic childhood, substance abuse issues, and the Defendant's medical diagnoses of Attention Deficit Disorder and Antisocial Personality Disorder as testified to by Dr. Bean and Dr. Mechanick. He further stated that the inconsistencies in his statements and the false confessions of ten other murders caused them concern, and when they confronted the Defendant as to why he told such false things to the police, the Defendant stated that he was playing games with the police. And, although they were concerned with the truthfulness of the confessions, they also knew that there were certain facts that the Defendant confessed to that would only be knowledgeable to the one who murdered Ms. Long. He stated that while some of what the Defendant exaggerated to the police was not corroborated, much of what he said was corroborated by the physical evidence. Mr. Capone stated that while he felt the guilt and penalty phase were both difficult to persuade the jury of the merits of the defense's position, they had sufficient mitigators, which included the Defendant's tragic upbringing and mental disorders to bring to the jury.

Mr. Gabay stated that he did not question the reliability of the Defendant's statements due to the inconsistencies therein because the Defendant was "puffing" and

"messing" with the police.[19] He further stated that even though the Defendant had grandiose thoughts and was trying to build himself up, it was his impression that it did not rise to the level where they needed to investigate a serious mental illness. He also stated that bringing the false statements to light in front of the jury and showing the jury that he was playing games with the police would go to his character and propensities that would hurt him in the penalty phase. Mr. Gabay admitted that the letters written by the Defendant, which were graphic and vulgar, were other examples of the Defendant to attract attention and sensationalize himself, but he stated that they were able to minimize the damage of the letters by having the State agree to limit the letters introduced at the penalty phase. He also stated that after he investigated some of the alleged murders of others besides Ms. Long, the Defendant admitted to having made them up.

The Defendant argues his trial counsel was ineffective because they failed to explore further with the mental health professionals, which they retained and consulted during the trial, about the Defendant's gross exaggeration and misrepresentation of his criminal conduct. Specifically, the Defendant asserts that had trial counsel brought the inconsistencies between his confessions and the physical evidence, his false confessions to other homicides, and the gruesome and bizarre

[19] (Hr'g Tr. dated 1-2-01 at 16.)

letters to the attention of the mental health professionals, the outcome of the penalty hearing may have been different because they would have been able to provide an explanation, i.e. a mental disturbance, for these horrific and vile aspects of the case. The Court finds no merit in these arguments.

While the Defendant's confessions may have grossly exaggerated his criminal conduct and were not completely corroborated by the physical evidence in the medical examiner reports, it is fair to say that a great deal of the Defendant's admissions were supported by the evidence and any inconsistencies were the result of the Defendant's gamesmanship with the police. Counsel believed that to fully play before the jury the Defendant's exaggeration would only hurt the Defendant's chance of a successful mitigation case and would not have helped save their client's life. As evidenced by the Defendant's recent interaction with Dr. O'Brien, the Defendant was a very difficult client and it is clear to this Court that the attorneys in this case performed their responsibility professionally and in the best interest of the Defendant, even when the Defendant could care less. When you place the Defendant's gamesmanship in context with the significant interaction by counsel with the Defendant it is clearly reasonable for the attorneys to believe the Defendant was generally being his uncooperative and aggravating self. The decision not to place this conduct before the jury was not only reasonable but was the right decision. It would have hurt not helped

the Defendant's chances of success by portraying him as an even more dangerous individual. The Court finds that a reasonable basis existed for trial counsel's tactical decision in this area.

Furthermore, the Defendant was examined and tested by two experts before the trial and provided mental diagnoses that did not include Narcissistic Personality Traits as found by Dr. O'Brien. Counsel is not required to continue to search for additional mental health professionals when it appears that the diagnosis given by those already retained would reasonably explain the conduct of the Defendant. The Court finds that these doctor's failure to include a finding of narcissistic personality traits does not render trial counsel's conduct ineffective.

Drs. Mechanick and Bean are outstanding doctors who are recognized as leaders in their professions and whose advise is consistently sought by the prosecution and defense. And, unlike Dr. O'Brien whose analysis is based solely on documentation and without interviewing the Defendant, Drs. Mechanick and Bean actually interviewed the Defendant for hours. The disorders identified by these doctors were presented to the jury and Court, and nothing Dr. O'Brien would have added would have changed either the jury's or the Court's decision.

In addition, the Court has found that any alleged ineffective assistance of a psychological expert does not state a claim for postconviction relief. In *State v.*

Sullivan,[20] the defendant argued that defense counsel were ineffective during the penalty phase because they failed to explore, prepare, and present fetal alcohol syndrome ("FAS/FAE") as a mitigating factor. In their defense, counsel explained that a specific FAS/FAE investigation was not performed because a sufficient threshold of facts was not presented to require one. The Court agreed, stating that "counsel's failure to pursue certain investigations cannot be later challenged as unreasonable when the Defendant has given counsel reason to believe that a line of investigation should not be pursued."[21] The Court further stated that there was no history of alcoholism in the Defendant's family and mental examinations were done. In addition, the Court noted that there was no suggestion that the selection of the doctor was ineffective and that just because one doctor finds fault with another's report and testimony does not show that defense counsel was ineffective. The Court concluded that even if the Court agreed with the doctor's criticisms of the initial doctor, "alleged ineffective assistance of a psychological or psychiatric expert does not state a cognizable claim for postconviction relief."[22]

Similarly applicable to the case sub judice, there were no allegations that the

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[20] Del. Super., Cr. A. No. IK92-01-0192-R1 to IK92-01-0196-R1, IK92-02-0001-R1 and IK92-03-0022-R1, Ridgely, P.J. (June 29, 1995)(Mem. Op.).

[21] *Id*. at *8 (*quoting United States v. Gray*, 3d Cir., 878 F.2d 702, 710 (1989)).

[22] *Sullivan* at *8.

selection of Dr. Bean and Dr. Mechanick were ineffective. While trial counsel was aware of the inconsistencies and the Defendant's exaggerations, they considered them to be consistent with the diagnosis made by the doctors they had retained and highlighting them further would only prove to be detrimental to the Defendant. This was a rational and reasonable decision.

The Court further finds that the Defendant has not demonstrated a reasonable probability that, but for trial counsel's errors, a different outcome would have resulted. In the Court's findings after the penalty hearing, it acknowledged that the Defendant had several disorders as mitigating factors. The Court finds that the inclusion of the disorder found by Dr. O'Brien would not have caused any difference in this Court's balancing of the mitigating and aggravating factors.

CONCLUSION

For the reasons set forth above, the Court DENIES the Defendant's Motion for Postconviction Relief under Rule 61.

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Judge William C. Carpenter, Jr.