

Submitted: May 11, 2001  
Decided: May 31, 2001

Ernest L. Littleton  
I.D. No. 9910022874  
Sussex Correctional Institution  
P.O. Box 500  
Georgetown, DE 19947  
N440

Re: *State of Delaware v. Ernest Lemuel Littleton*  
Criminal Action No. IN 99-11-0439 R1, 0440 R1

Dear Mr. Littleton:

I have received your motion for postconviction relief, filed pursuant to Super. Ct. Crim. R. 61. As grounds for relief, you raise allegations of ineffective assistance of counsel, prosecutorial misconduct and improper victim impact statement from the mother of one of your alleged victims. Having reviewed your motion, as well as the record and the supplemental materials, I conclude that you are not entitled to relief.

As you know, you entered a *Robinson* plea<sup>1</sup> to two counts of Unlawful Sexual Contact, Second Degree on April 10, 2000. The State entered a *nolle prosequi* on the remaining charges, which included one charge of Sexual Penetration, Third Degree; one charge of Unlawful Sexual Contact, Second Degree; and three charges of Endangering the Welfare of a Child. The charges pertained to your conduct with three different minor children. On June 9, 2000, you were sentenced to four years at Level V, suspended after two years for two years at Level III, as well as additional conditions.

---

<sup>1</sup>See *Robinson v. State*, Del. Supr., 291 A.2d 279 (1972).

You now contend that your attorney failed to inform you of what evidence the State had against you, and that this failure constitutes ineffective assistance of counsel. However, you indicated at the plea colloquy and also on the written plea agreement that you were satisfied with your attorney's representation. In the absence of clear and convincing evidence to the contrary, you are bound by these statements.<sup>2</sup> You have not submitted any such evidence.

Furthermore, your contention that you were unaware of the evidence against you is belied by the record. Your in-court statements at the sentencing hearing show that you were aware that the State's case included your own statement to the police, as well as the statements of your victims.<sup>3</sup> The plea agreement, which you signed on April 10, 2000, reflects your forfeiture of your personal computer, as well as the State's agreement not to pursue any child pornography charges that might arise from analysis of your computer. These facts show that you were well aware of the major components of the State's case against you. Therefore, even assuming *arguendo* that you and your attorney never discussed the evidence, you cannot substantiate any claims of cause and actual prejudice, as required to prevail on a claim of ineffective assistance of counsel.<sup>4</sup> This claim has no merit.

You also claim that, at the sentencing hearing, the prosecutor inappropriately referred to the fact that there were other possible victims. You also imply that the sentencing proceedings were tainted by the fact that the mother of Andrea Scott, a victim involved in one of the *nolle prossed* charges, gave a victim impact statement. You did not raise these issues at the hearing and you have made no effort in the motion to overcome the

---

<sup>2</sup>*Somerville v. State*, Del. Supr., 703 A.2d 629, 632 (1997) (citations omitted).

<sup>3</sup>Transcript of Sentencing Proceedings (June 9, 2000) at 18.

<sup>4</sup>*Younger v. State*, Del. Supr., 580 A.2d 552, 556 (1990).

procedural bar against issues that were not raised earlier in the proceedings.<sup>5</sup> This claim is therefore subject to procedural default.

---

<sup>5</sup>Super. Ct. Crim. R. 61(i)(3) provides as follows:

**Procedural default. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows**

- (A) Cause for relief from the procedural default and**
- (B) Prejudice from violation of the movant's rights.**

Furthermore, in making sentencing decisions, this Court has broad discretion to consider information pertaining to a defendant's history or conduct other than that for which he was convicted.<sup>6</sup> In fact, the Court may rely on information regarding other unproven crimes, as long as the information is not materially untrue or lacking in any indicia of reliability.<sup>7</sup> In your case, the record is clear that there were victims other than those involved in the two charges to which you pled guilty. Andrea Scott was one of those other victims,<sup>8</sup> and her mother's statement to the Court was not improper under Delaware law. Neither of these claims has any merit.

For all these reasons, the Court concludes that your motion for postconviction relief must be, and hereby is, DENIED.

**IT IS SO ORDERED.**

Very truly yours,

---

<sup>6</sup>*Mayer v. State*, Del. Supr., 604 A.2d 839, 842 (1992) (citations omitted).

<sup>7</sup>*Id.* at 842-43 (citations omitted).

<sup>8</sup>As defined in 11 *Del. C.* § 9401(5), "'Victim' means the person . . . identified as the victim of a crime in a police report, a criminal complaint or warrant, an indictment or information or other charging instrument."

*State of Delaware v. Ernest Littleton*  
May 31, 2001  
Page 5

Corrected Page 3 - June 1, 2001

Susan C. Del Pesco

SCD/msg  
Original to Prothonotary  
xc: Donald Roberts, Esquire  
Raymond Radulski, Esquire

Ernest L. Littleton  
I.D. No. 9910022874  
Sussex Correctional Institution  
P.O. Box 500  
Georgetown, DE 19947  
N440