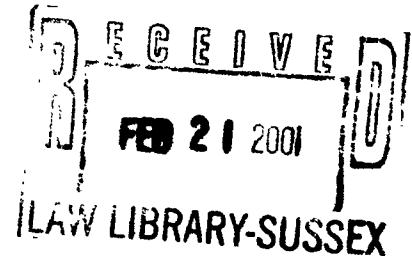


SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

P.O. BOX 746  
COURTHOUSE  
GEORGETOWN, DE 19947

February 20, 2001



Jermaine D. Piper  
Sussex Correctional Institution  
P.O. Box 500  
Georgetown, DE 19947

RE: State v. Piper, Def. ID# 0004009570

DATE SUBMITTED: January 23, 2001

Dear Mr. Piper:

Pending before the Court is the motion of defendant Jermaine D. Piper ("defendant") for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). This is my decision on the motion.

On April 13, 2000, defendant was arrested on charges of burglary in the second degree; theft (felony); and conspiracy in the second degree. Thereafter, defendant was indicted by a Grand Jury on these same charges.

On June 21, 2000, defendant, through his attorney, filed a motion for habeas corpus. In the motion, defendant argued that he should be released from prison and the charges should be dismissed because defendant was not ever brought before the nearest available Justice of the Peace. The Superior Court considered the motion on June 21, 2000. The Court determined the best way of resolving the

matter, which concerned the bond, was to reset the bond. The Court then reset the bond.

On September 7, 2000, defendant knowingly, voluntarily, and intelligently entered into a plea of no contest<sup>1</sup> to the charge of burglary in the second degree.<sup>2</sup> The other two charges were nolle prossed. Defendant was sentenced to five (5) years at Level 5, with credit for time served, and after serving one (1) year at Level 5, the balance is suspended for four (4) years at Level 3, consecutive to any other probation defendant now is serving.

Defendant did not file an appeal.

On January 2, 2001, defendant filed this Rule 61 motion, asserting the three grounds for relief which are discussed below. Although he does not say so, defendant apparently seeks to withdraw his guilty plea.

The first ground for relief defendant asserts is illegal detention. Defendant argues that he was illegally detained because he was not taken to the nearest Justice of the Peace as Superior Court Criminal Rule 5 requires and because there was a violation of Superior Court Criminal Rule 4(c). The second ground for relief he asserts is "violation of due process". He asserts that all of the

<sup>1</sup>A plea of no contest has the same effect as a plea of guilty in this criminal proceeding. V.F.W. Holding Co., Inc. v. Delaware Alcoholic Beverage Control Commission, Del. Super., 252 A.2d 122, 123 n. 1 (1969).

<sup>2</sup>Defendant does not argue that his plea was not knowingly, intelligently, and voluntarily entered. A review of the transcript of the plea colloquy, the Truth-in-Sentencing Guilty Plea Form, and the Plea Agreement establishes defendant knowingly, intelligently, and voluntarily entered into the plea.

procedures which took place after the violation of Superior Court Criminal Rules 4 and 5 violated due process rights provided by the Fifth and Fourteenth Amendments.

When defendant knowingly, intelligently, and voluntarily entered into his guilty plea, he waived his right to assert these claims of illegal detention and due process violations. *Hickman v. State*, Del. Supr., No. 298, 1994, Veasey, C.J. (October 11, 1994) at 3-4; *Palmer v. State*, Del. Supr., No. 68, 1994, Moore, J. (May 5, 1994) at 2; *Smallwood v. State*, Del. Supr., 599 A.2d 414 (1991) (The Supreme Court quotes from *Tollett v. Henderson*, 411 U.S. 258, 267 (1973), as follows: "'When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.'"); *Fullman v. State*, Del. Supr., 560 A.2d 490 (1989) ("[A] guilty plea ... constitutes a waiver of possible defenses.") Thus, these two claims are procedurally barred.

Defendant's third claim for postconviction relief is ineffective assistance of counsel. Defendant argues that his counsel should have taken proper steps to have had the commitment vacated when counsel was aware that defendant was illegally held.

In connection with the ineffective assistance of counsel claim, I turn to *State v. Gattis*, Del. Super., Cr.A. Nos. IN90-05-1017 to 1019, Barron, J. (December 28, 1995) at 7-9, aff'd, Del. Supr., 637 A.2d 1174 (1997), for the standard to apply to such a

claim:

This type of claim is normally not subject to the procedural default rule, in part because the Delaware Supreme Court will not hear such a claim for the first time on direct appeal, and therefore as a practical matter the first opportunity to raise this issue is in a collateral attack such as the Rule 61 motion for postconviction relief. [Citations omitted.] For this reason, many defendants ... allege ineffective assistance of trial counsel in order to overcome the procedural default.

However, this path creates confusion for the defendant if he does not understand that the test for ineffective assistance of counsel and the test for cause and prejudice are distinct, albeit similar, standards. For example, the United States Supreme Court has stated that

[i]f the procedural default is the result of ineffective assistance of counsel, the Sixth amendment itself requires that responsibility for the default be imputed to the State, which may not 'conduc[t] trials at which persons who face incarceration must defend themselves without adequate legal assistance.' Ineffective assistance of counsel, then, is cause for a procedural default.

Murray v. Carrier, 477 U.S. 478, 487 (1986) (emphasis added). A movant who interprets the final sentence of the quoted passage to mean that he can simply assert ineffectiveness and thereby meet the cause requirement will miss the mark. Rather, to succeed on a claim of ineffective assistance of counsel, a movant must engage in the two-part analysis enunciated in Strickland v. Washington, 466 U. S. 668 (1984) and adopted by the Delaware Supreme Court in Albury v. State, Del. Supr., 551 A.2d 53 (1988).

The Strickland test requires the movant to show first that counsel's errors were so grievous that his performance fell below an objective standard of reasonableness. Strickland at 687. Second, under Strickland the movant must show there is a reasonable degree of probability that but for counsel's unprofessional errors the outcome of the proceedings would have been different, that is, actual prejudice. Id. at 694. In setting forth a claim of ineffective assistance of counsel, a defendant must make and substantiate concrete allegations of actual prejudice or risk summary dismissal. [Citations omitted.]

Generally, the claim for ineffective assistance fails unless both prongs of the test have been established.

Strickland at 687. However, the showing of prejudice is so central to this claim that the Strickland Court stated that "[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." Id. at 697. In other words, if the Court finds that there is no possibility of prejudice even if a defendant's allegations regarding counsel's representation were true, the Court may dispose of the claim on this basis alone.

Furthermore, the defendant must rebut a "strong presumption" that trial counsel's representation fell within the "wide range of reasonable professional assistance," and this Court must eliminate from its consideration the "distorting effects of hindsight when viewing that representation." Strickland at 689.

In this case, trial counsel made a motion in connection with the alleged illegal detention, and this motion was denied. Thus, trial counsel took the steps which defendant maintains he did not take.

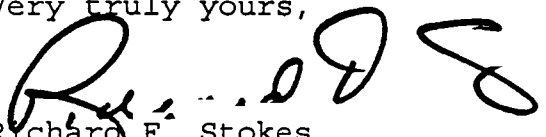
Even if trial counsel did not take these steps, the ineffective assistance of counsel claim fails because defendant has failed to even allege, let alone show to a reasonable degree of probability, that but for counsel's unprofessional errors, he would not have entered the plea. The record of the plea colloquy makes clear that defendant voluntarily entered into the plea, was well aware he would not be going to trial, understood the sentence he was facing, and was satisfied with trial counsel's representation in the matter. Absent clear and convincing evidence to the contrary, he is bound by these statements. *Hickman v. State*, Del. Supr., *supra* at 3; *Wright v. State*, Del. Supr., No. 284, 1992, Moore, J. (September 24, 1992) at 2; *Wright v. State*, Del. Supr., No. 400, 1991, Walsh, J. (February 20, 1992) at 3; *Fullman v. State*, 560 A.2d.

Based upon the record which clearly establishes that defendant knowingly and voluntarily entered the plea, that he was not coerced into entering the plea, and that he was satisfied with his counsel, I find that there is no reasonable probability that the illegal detention issue had any effect on defendant's entering the plea and that defendant was not coerced into entering into the plea. Consequently, defendant is not entitled to withdraw his plea.

For the foregoing reasons, I deny the Rule 61 motion.

IT IS SO ORDERED.

Very truly yours,

  
Richard F. Stokes

cc: Prothonotary's Office  
Adam D. Gelof, DAG  
Timothy G. Willard, Esquire