

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

P.O. BOX 746
COURTHOUSE
GEORGETOWN, DE 19947

May 23, 2003

Ray A. Revel
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: State of Delaware v. Ray A. Revel,
Def. ID# 0002014354 (R-1)

DATE SUBMITTED: May 1, 2003

Dear Mr. Revel:

Pending before the Court is the motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61") which defendant Ray A. Revel ("defendant") has filed. This is my decision denying the motion.

On September 7, 2000, defendant pled guilty to two charges: driving under the influence (fourth offense) ("DUI") and escape in the third degree. The written Plea Agreement specified as follows regarding the sentence:

[As to the DUI]: 5 years L5, credit time served, after serving 9 months L5 (6 mos. of which is min/mandatory), bal. suspended for 1 yr. L4 and successful completion of Crest Program, then 3 yrs 3 mos L3

[As to Escape 3rd]: 1 yr. L5, suspended for 1 yr. L3

The Court sentenced defendant in pertinent part as follows:

[As to the DUI]: The defendant is placed in the custody of the Department of Correction for 5 year(s) at supervision level 5 with credit for time served

- Suspended after serving 9 month(s) at supervision level 5

- For 1 year(s) supervision level 4 RESID SUB ABUSE TREATMENT

- Upon successful completion at supervision level 4 RESID SUB ABUSE TREATMENT

- Balance of sentence is suspended for 3 year(s) 3 month(s) supervision level 3

The first 6 MONTHS of this sentence is a mandatory term of incarceration pursuant to DE 11/4204K.

[As to the Escape in the third degree]: The defendant is placed in the custody of the Department of Correction for 1 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Defendant did not appeal from the original sentencing order.

Defendant ultimately was placed in the New Horizons Program which is the Crest Program, but with another name.

Defendant twice was violated on probation because he refused to participate in the Level 4 Residential Substance Abuse Treatment Program. After finding defendant in violation the first time, the Court gave defendant another chance, and, on September 20, 2001, reimposed the original sentence. Defendant did not appeal. On January 9, 2002, the Court found defendant in violation a second time and sentenced defendant to Level 5 time only. Defendant did not appeal.

By motion dated January 16, 2002, defendant sought a correction of an illegal sentence, arguing the Court's sentencing

him on the escape charge constituted double jeopardy. The Court denied this motion as legally meritless. State v. Revel, Del. Super., Def. ID# 0002014354, Stokes, J. (January 29, 2002). Defendant twice again raised this same issue in correspondence to the Court; both times, his contentions were dismissed as legally meritless. State v. Revel, Del. Super., Def. ID# 0002014354, Stokes, J. (February 11, 2002); State v. Revel, Del. Super., Def. ID# 0002014354, Stokes, J. (March 11, 2002). Defendant did not appeal from any of these decisions.

By letter dated March 22, 2003, defendant sought relief from the Court, arguing he was being punished for refusing to do a program which he did not agree to do at the time he entered the plea. The Court explained that "[w]hile the primary phase of the Crest Program may be referred to as New Horizons, it is, in fact, the Crest Program." State v. Revel, Del. Super., Def. ID# 0002014354, Stokes, J. (March 27, 2003). The Court refused to revisit its sentencing decision. Defendant did not appeal.

On April 20, 2003, defendant filed the pending motion for postconviction relief. He seeks to withdraw his guilty plea on the ground of an unfulfilled plea agreement. He first argues that his plea agreement required he undergo the Crest Program. Since he is not undergoing the Crest Program, the plea should be vacated, the original charges should be reinstated, and he should have a trial.¹ Defendant's second argument is that the program, by

¹Defendant does not actually request reinstatement of the charges, but that is what happens once a defendant is allowed to withdraw from the plea agreement.

whatever name, is not the program to which he agreed; i.e., he did not agree to the location of the program, the clothing requirements which must be worn, etc.

The motion is procedurally barred; defendant previously had the opportunity to raise these arguments and failed to do so. Super. Ct. Crim. R. 61(i)(3).² Defendant has not attempted to establish any cause for relief from the procedural default or prejudice. Furthermore, he has not attempted to show the bar is inapplicable because the Court lacked jurisdiction or because there is 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. Super. Ct. Crim. R. 61(i)(5).

Even if defendant overcame the procedural bars, the first claim is meritless. The New Horizons Program is the Crest Program. Defendant received the benefit of his bargain. He is the party who failed to fulfill the plea agreement.

The second claim also is meritless. A review of the plea colloquy, the Plea Agreement and the Guilty Plea Form evidences that defendant agreed to enter a Residential Substance Abuse

²In Superior Court Criminal Rule 61(i)(3), it is provided:

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.

Treatment Program; defendant did not (nor could he ever) dictate the day-to-day workings of that program as a condition of his plea. He has not produced any evidence which would prevent this Court from considering him to be bound by his sworn statements and the written documents submitted during the taking of the plea. Rogers v. State, Del. Supr., No. 473, 2002, Holland, J. (April 29, 2003); Fullman v. State, 560 A.2d 490 (Del. 1989). Defendant entered the plea knowingly, willingly and voluntarily. There is no basis for him to withdraw from the plea.

For the foregoing reasons, the Rule 61 motion is denied.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
Paula Ryan, DAG
Ruth M. Smythe, Esquire