

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD R. COOCH  
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 N. KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801  
(302) 255-0664

Cynthia R. Kelsey, Esquire  
Deputy Attorney General  
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Wilmington, Delaware 19801

Corey Johnson  
Multi-Purpose Criminal Justice Facility  
P.O. Box 9561  
Wilmington, Delaware 19809

**Re: *State of Delaware v. Corey Johnson***  
**I.D. #0004002317**

Submitted: February 24, 2003  
Decided: May 19, 2003

**Upon Defendant's Motion for Postconviction Relief.**  
**SUMMARILY DISMISSED.**

Dear Ms. Kelsey and Mr. Johnson:

Defendant was originally charged with various drug possession, delivery, and trafficking charges, including Trafficking in Cocaine (title 16, section 4753A of the Delaware Code), to which Defendant pleaded guilty. The Court thereafter sentenced Defendant to six years at Level V (with credit for time served), suspended after 3 years for three years at Level IV, suspended after six months for two years and six months at Level III. Defendant had previously pleaded guilty and been sentenced in 1995 for Carrying a Concealed Deadly Weapon (title 11, section 1442 of the Delaware Code), in 1996 to Possession of a Deadly Weapon by a Person

Prohibited (title 11, section 1448 of the Delaware Code) and Possession of Marijuana (title 16, section 4754 of the Delaware Code), and in 2000 to Possession of Marijuana Within 300 Feet of a Park (title 16, section 4768 of the Delaware Code).

Defendant now seeks postconviction relief in the form of a modification of sentence, predicated largely upon Defendant's asserted claims of ineffective assistance of counsel. Specifically, Defendant claims that counsel neglected to tell him of the possibility of Delaware's "First Offender Controlled Substances Diversion Program,"<sup>1</sup> that counsel "made no attempt to tender a 'First Offender' Plea Offer to the prosecution[,]"<sup>2</sup> that counsel failed to "explain" or "explore" the "First Offenders" Program with him,<sup>3</sup> and that he had trusted counsel to "look[ ] into every avenue on [his] behalf[ ][.]"<sup>4</sup> Defendant therefore "request[s] to be re-sentenced according to the provisions of the program."<sup>5</sup>

The State contends that Defendant's counsel was not ineffective in that counsel was able to successfully negotiate a plea agreement that resulted in most of the charges against Defendant having been nolle prossed. The State additionally contends that Defendant was ineligible for the "First Offenders" Program because of Defendant's prior convictions.

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<sup>1</sup> Def.'s Mot. for Postconviction Relief ¶ 1. In his motion, Defendant refers to the program simply as "First Offender[s]."

<sup>2</sup> Id. ¶ 2.

<sup>3</sup> Id. ¶ 3.

<sup>4</sup> Id. ¶ 4.

<sup>5</sup> Id.

Defendant's counsel submitted an affidavit in which he stated that he believes he obtained "the best plea bargain possible for [Defendant] and that he fully advised [Defendant] of his rights and liabilities prior to the plea."<sup>6</sup>

To succeed on a claim of ineffective assistance of counsel, a defendant must show that "counsel's representation fell below an objective standard of reasonableness" and "that there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different."<sup>7</sup> This two-part test applies to guilty plea challenges based on a claim of ineffective assistance of counsel.<sup>8</sup> "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice...that course should be followed."<sup>9</sup>

Here, Defendant ultimately claims that he should not now be incarcerated at Level V, but that he should have previously been sentenced to Delaware's "First Offender Controlled Substances Diversion Program."<sup>10</sup> However, that program is available only to persons who "ha[ve] not been convicted of any offense...relating to narcotic drugs, marijuana, or stimulant, depressant, hallucinogenic drug or other substance...."<sup>11</sup> Since Defendant had previously pleaded guilty to drug charges in 1996 and 2000, he was not eligible for this program, as pointed out by the State.

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<sup>6</sup> Jerome M. Capone Aff. of 12/16/02 ¶ 5.

<sup>7</sup> Albury v. State, 551 A.2d 53, 58 (Del. 1988) (quoting Strickland v. Washington, 466 U.S. 668, 688, 694 (1984)).

<sup>8</sup> Albury, 551 A.2d at 58 (citing Hill v. Lockhart, 474 U.S. 52, 58 (1985)).

<sup>9</sup> Strickland, 466 U.S. at 697.

<sup>10</sup> See DEL. CODE ANN. tit 16, § 4764 (1995).

<sup>11</sup> Tit. 16, § 4764(a)(1).

Because he was ineligible for the “First Offender” Program, Defendant has suffered no prejudice, even if he was not in fact informed of the program’s existence. Because he had suffered no prejudice, Defendant’s counsel was not ineffective. “If it plainly appears from the motion for postconviction relief and the record of prior proceedings...that the movant is not entitled to relief, the judge may enter an order for its summary dismissal....”<sup>12</sup> Accordingly, Defendant’s Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

**IT IS SO ORDERED.**

Very truly yours,

/jkk

oc: Prothonotary  
xc: Investigative Services

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<sup>12</sup> Super. Ct. Crim. R. 61(d)(4); Younger v. State, 580 A.2d 552, 556 (Del. 1990).