IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 0008020754
	)	
JAMAH K. GROSVENOR,	)	
	)	
Defendant.	)	

Submitted: October 6, 2003
Decided: January 30, 2004

On Defendant's *Pro Se* Motion for Postconviction Relief. Denied.

ORDER

R. David Favata, Deputy Attorney General, Wilmington, Delaware 19801.

Jamah K. Grosvenor, Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware 19977. *Pro se.*

CARPENTER, J.

On this 30th day of January, 2004, upon consideration of Defendant's Motion for Postconviction Relief it appears to the Court that:

1. Jamah Grosvenor, ("Defendant"), has filed a *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. At the request of the Court, Defendant's trial attorney, Edward C. Pankowski, Jr., Esquire ("Counsel") filed an affidavit refuting the allegations of ineffective assistance of counsel. For the reasons set forth below, Defendant's Motion for Postconviction Relief is **DENIED**.

2. On December 18, 2000, Defendant pled guilty to Burglary Third Degree and was sentenced to eighteen (18) months Level II probation. He also pled guilty to Assault Third Degree and the Court sentenced the Defendant to twelve (12) months Level II probation. The Defendant did not appeal his conviction or sentence. On August 8, 2002, following a violation of probation, Defendant was incarcerated. Thereafter, Defendant filed a Motion for Sentence Reduction, which on October 23, 2002, was denied by the Court.

3. Consequently, Defendant filed a Motion for Postconviction Relief and asserted the following two grounds for relief:

(1) Invalid indictment; and
(2) Ineffective assistance of counsel.

Within the Defendant's claim of ineffective assistance of counsel, he alleges five different basis as grounds for relief. Defendant first alleges that his counsel coerced him to waive the preliminary hearing. Second, Defendant claims that his counsel never intended to go to trial and as a result, his counsel did not prepare to defend the Defendant. Third, Defendant asserts that his counsel did not establish which defenses he would use in Defendant's case. Fourth, Defendant asserts that he asked his counsel to have the burglary charged dropped, but Defendant asserts that his counsel did not investigate the facts of the case nor did his counsel attempt to have the charge dismissed. Finally, Defendant asserts that his counsel made him believe that under the plea agreement, Defendant plead guilty to two misdemeanors.

4. Before addressing the merits of any claims raised in a motion seeking postconviction relief, this Court must first apply the rules governing the procedural requirements of Superior Court Criminal Rule 61(I).[1] Normally when, as in this case, a Defendant enters a guilty plea, Rule 61(I)(3)[2] bars relief when claims are later raised which were not raised at the plea, sentencing or on direct appeal. Consequently,

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[1] *See* Bailey v. State, 588 A.2d 1121, 1127 (Del. 1991); Younger v. State, 580 A.2d 552, 554 (Del. 1990) (*citing* Harris v. Reed, 489 U.S. 255, 265 (1989)).

[2] Super. Ct. Crim. R. 61(i)(3), states that "[a]ny 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) [c]ause for relief from the procedural default and (B) [p]rejudice from violation of the movant's rights."

Defendant's first ground, invalid indictment, is procedurally barred because Defendant failed to raise this at the plea, sentencing or on direct appeal. However, in Defendant's second ground, he raises a claim of ineffective assistance of counsel and the Court is required to determine whether it presented a colorable claim of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings.[3]

5. An ineffective assistance of counsel claim requires a showing that counsel's errors were so serious as to deprive the defendant of a fair trial and resulted in a trial that is unreliable.[4] In order for a movant to prevail on a claim of ineffective assistance of counsel he must satisfy the two-prong test of *Strickland v. Washington*.[5] *Strickland* requires that a defendant show: (1) that counsel's representation fell below an objective standard of reasonableness; and (2) that counsel's actions were prejudicial to him in that there is a reasonable probability that, but for counsel's unprofessional error, the result of a proceeding would have been different.[6] Under the first prong of the *Strickland* test, there is a strong presumption that counsel's

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[3] *See* Super. Ct. Crim. R. 61(i)(5); *State v. Scott*, 2002 WL 485790, at *3 (Del. Super. Ct.).

[4] *See* State v. Talmo, 2002 WL 1788111, at *1 (Del. Super. Ct.) (*citing* Strickland v. Washington, 466 U.S. 668 (1984).

[5] *See* Strickland v. Washington, 466 U.S. 668, 687 (1984).

[6] *See* Albury v. State, 551 A.2d 53, 58 (Del. 1988) (*quoting Strickland*, 466 U.S. at 688, 694).

representation was professionally reasonable.[7] Although this is not insurmountable, *Strickland* mandates that this Court must "eliminate the distorting effects of hindsight" when reviewing counsel's representation.[8] Delaware has additionally held that a defendant must make "concrete allegations of actual prejudice and substantiate them or risk summary dismissal" in claims of ineffective assistance of counsel.[9] The Defendant's allegations fail to meet these tests.

6. The Defendant first alleges that his counsel coerced him to waive the preliminary hearing. According to the Defendant, Mr. Pankowski explained that the Defendant did not need to stay for the hearing because the police officers would merely repeat the facts of the case and the court would issue another court date. The Defendant further contends that his counsel did not explain that the Defendant would have an opportunity to cross-examine the police officers and attempt to eliminate some of the charges. Mr. Pankowski explained in his affidavit that he was not present at the preliminary hearing and that the file indicates it was waived[10] but that he discussed the preliminary hearing with the Defendant on several occasions.[11] As to

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[7] *See Albury*, 551 A.2d at 59 (citing *Strickland*, 466 U.S. at 689); *see also* Larson v. State, 1995 WL 389718, at *4 (Del. Supr.); Flamer v. State, 585 A.2d 736, 753 (Del. 1990).

[8] *See Strickland*, 466 U.S. at 689.

[9] *See* State v. Wilson, 2001 WL 392357, at *2 (citing *Younger*, 580 A.2d at 556; Skinner v. State, 1994 WL 91138 (Del. Supr.)).

[10] *See* Affidavit of Edward C. Pankowski, Jr. at ¶ 7.

[11] *See* Affidavit of Edward C. Pankowski, Jr. at ¶ 7.

this assertion, the Court cannot find that the Defendant has presented any evidence of effective assistance of counsel. Even if the Court was to believe, which it does not, that the Defendant was mislead as to the significance of the preliminary hearing, any adverse consequences would have become moot by the subsequent indictment of the Defendant. In reality, the benefit of a preliminary hearing is minimal as it relates to the ultimate outcome of the case. Primarily, the preliminary hearing serves as a check to ensure a defendant is not improperly held on insufficient evidence to establish probable cause. These hearings are frequently waived, particularly when the police report is provided by the prosecution as occurred here, and the Defendant would have suffered no prejudice if Mr. Pankowski took that course of action. Therefore, the Court finds that Defendant's first claim is without merit.

7. Defendant's second claim is that Mr. Pankowski never intended to go to trial and as a result, he did not prepare to defend the Defendant. In support of this claim, Defendant asserts that his counsel failed to investigate Defendant's mental state at the time of the incident. Mr. Pankowski's affidavit reflects that he had "full discovery and was fully prepared to defend [Mr. Grosvenor's] case if necessary" and the Court accepts Mr. Pankowski's representation that he was prepared to proceed to trial.[12] From the police report, it is clear, however, that taking the case to trial would

[12]Affidavit of Edward C. Pankowski, Jr. at ¶ 10.

have been an unwise decision based upon the overwhelming evidence as to the Defendant's guilt. He could have clearly been found guilty of all the offenses, which would have resulted in a significantly different and adverse sentence for the Defendant. Mr. Pankowski performed as any good defense counsel would have under the circumstances. He limited the Defendant's exposure and negotiated an extremely favorable plea agreement. There was no need to investigate the Defendant's mental state since it appears from his drug history that he voluntarily used LSD and marijuana, including at the time of the offense and the Defendant's drug intoxication would not serve as a defense to the crime. The Defendant has no recollection of the events on August 25, 2000 because he elected to get high that evening. As a result, the Court further finds that this contention is legally insufficient to prove ineffective assistance of counsel.[13]

8. Superior Court Criminal Rule 61(d)(4) provides that "[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified."[14] Claims for postconviction

[13]*See* Jordan v. State, 1994 WL 466142 (Del. Supr.) (*citing Younger*, 580 A.2d at 556; Robinson v. State, 562 A.2d 1184, 1185 (Del. 1989)).

[14]Super. Ct. Crim. R. 61(d)(4).

relief, which are entirely conclusory may be summarily dismissed on that basis.[15] Here, Defendant's third ground for relief within his claim of ineffective assistance of counsel is a bald accusation. The Defendant has failed to offer facts to support his argument and as a result, the Court will not consider its merits. As such, this claim is summarily dismissed.

9. Defendant's fourth claim is that he asked his counsel to have the burglary charged dropped and Defendant asserts that Mr. Pankowski did not investigate the facts of the case and he did not attempt to have the burglary charge dismissed. However, the police witnessed the Defendant's actions on August 25, 2000 and the events set forth in the police report are consistent with a charge of burglary.[16] It appears that since the Defendant had no recollection of his actions on August 25, 2000, the Defendant could not provide any information to Mr. Pankowski to counter the overwhelming evidence set forth in the police report. As such, Mr. Pankowski did not prejudice the Defendant by failing to challenge the burglary charge and the Court is not prepared to rule that Mr. Pankowski's performance falls below the *Strickland* standard.

10. Defendant's final claim is that Mr. Pankowski made him believe that under

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[15] *See e.g.*, Jordan v. State, 1994 WL 466142 (Del. Supr.); Anderson v. State, 2002 WL 187509, at *4 (Del. Super.) (*citing* State v. Brittingham, 1994 WL 70341, at *3 (Del. Super.) (*citing* Younger v. State, 580 A.2d 552, 556 (Del. 1990) (holding that conclusory allegations are legally insufficient to prove ineffective assistance of counsel)).

[16] *See id.*

the plea agreement, Defendant plead guilty to two misdemeanors, which according to the Defendant were Assault Third Degree and Burglary Third Degree. Defendant's argument does not support his claim of ineffective assistance of counsel simply because the Defendant plead to exactly what was set forth in the plea agreement, which he signed, with the maximum penalty clearly set forth on the Truth-in-Sentencing guilty plea form also executed by the Defendant. The Defendant accepted the plea offer by the State and repeated to the Court that this was his understanding of the agreement. This plea was clearly advantageous to the Defendant and he received a very light sentence of Level II probation. There is absolutely nothing to support that the Defendant did not understand what he was pleading guilty to or the consequences of that plea. Therefore this claim is also without merit.

11. Based upon the above reasoning, the Court finds that neither *Strickland* prong has been established and the Defendant is not entitled to postconviction relief and the motion is hereby denied. The Court agrees with Mr. Pankowski that the Defendant is simply an individual who has only become unhappy with the performance of his counsel now that he has violated the favorable sentence worked out by his counsel and is currently incarcerated for a violation of probation. The Defendant's present situation is only of his own making and not the fault of anyone else. The Defendant spent less than five months on probation before he was apprehended again for serious weapon and drug charges. His afterthought claims of

ineffective assistance of counsel are clearly without merit.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.