SUPERIOR COURT
OF THE STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801
(302) 255-0669

STATE OF DELAWARE	)	
	)	
v.	)	ID#: 9809006423
	)	
SHAWN VANLIER,	)	
	)	
Defendant.	)	

Submitted: January 28, 2004
Decided: March 22, 2004

*Upon Defendant's Motion for Postconviction Relief--**DENIED, in part.***
EXPANSION OF THE RECORD ORDERED

PRELIMINARY ORDER

In March 16, 2001, a jury convicted VanLier of Attempted Rape in the First Degree, Kidnapping First Degree, Reckless Endangering Second Degree and Assault Third Degree. In summary, the victim claimed that Defendant, a stranger, accosted her as she walked home, shoved her down a railroad embankment and sexually assaulted her. VanLier's conviction was affirmed on December 27, 2002.[1] In January 2004, VanLier filed a timely motion for postconviction relief.

Under Superior Court Criminal Rule 61(d)(1), the court examined the

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[1] *VanLier v. State*, 813 A.2d 1142 (Del. 2002).

motion and contents of the file relating to the judgment under attack. As discussed below, in large part the motion is subject to summary dismissal under Rule 61(d)(4) because it plainly appears from the motion and the record that VanLier is not entitled to relief.

A. Pre-trial and Trial Errors

VanLier's motion has five parts. In the motion's first four parts VanLier claims that he did not get a fair trial. First, he challenges the sufficiency of the evidence. He focuses on the victim's identification of him as her assailant. Second, VanLier accuses the police of various errors and misconduct, including perjury. Third, VanLier attributes the guilty verdict to prejudice based on his race, homelessness and indigency. Fourth, he challenges the way the court instructed the jury. He contends that the court should not have defined the words "liberty" and "restraint" as they appear in the indictment and the criminal code. A recurring theme throughout VanLier's motion is the substantial delay between his indictment and trial.

The delay between VanLier's indictment and trial was raised during VanLier's direct appeal. The Supreme Court of Delaware, sitting *en banc*, considered and rejected VanLier's claim. Accordingly, that claim was formerly adjudicated and is barred here under Rule 61(i)(4). Similarly, because VanLier

could have raised the first four claims on direct appeal, they too are barred.[2] All other matters that VanLier could have raised on appeal but did not are also barred under Rule 61(i)(2).

Assuming that a defendant can avoid the bar against former adjudication by showing cause for the procedural default and prejudice, VanLier has not done so. After an appeal was filed, new and different counsel began representing VanLier. The appeal included the speedy trial claim, and VanLier could have complained to the Supreme Court about the other problems he allegedly was having with marshaling his issues. VanLier has never held back when he believed he was being treated unfairly.

Matters that should have been raised before VanLier was convicted, such as his jury instruction challenge, are barred under Rule 61(i)(3) because they were procedurally defaulted. VanLier's only explanation for not litigating those claims before or during his trial is the fifth and final claim he makes in his motion, ineffective assistance of counsel. The court will address that later. Meanwhile, VanLier's claims concerning errors in the proceedings leading to his conviction are procedurally barred and he has not shown any violation of his rights necessitating

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[2] Super. Ct. Crim. R. 61(i)(2).

relief from procedural default and prejudice.[3]

For the sake of completeness, the court also observes that the four claims summarized above are meritless. VanLier's trial centered around whether the victim was truthful about the attack and whether she was able to identify VanLier as her assailant. The State's case was not overwhelming. For example, the police could not find hairs, fibers, fingerprints or other physical evidence linking VanLier to the attack. Furthermore, the victim's statements and her testimony do not match up perfectly. Defendant's trial counsel also was able to suggest that some of the victim's statements and testimony were not well supported by circumstantial evidence. For example, the victim described what sounded like a violent attack, but she did not have serious physical injuries.

Nevertheless, the victim's testimony was corroborated by other circumstantial evidence, including the fact that the police found, in VanLier's possession, clothing matching the victim's description of the assailant's clothing. For all of the shortcomings and minor discrepancies pointed out by VanLier's trial counsel and by VanLier in his motion, it would have been difficult for the jury to doubt that something serious happened to the complaining witness and that VanLier

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[3] Super. Ct. Crim. R. 61(i)(3).

was the one who did it. Having reached those preliminary conclusions, the jury would have had little reason to doubt the rest of the victim's testimony about details. And that testimony, corroborated as it was in part circumstantial evidence, was sufficient to justify VanLier's conviction.

As to VanLier's specific accusations against the police, they are either conclusory or unsubstantiated. VanLier offers no evidence that the chief investigating officer lied at trial, as VanLier now claims. Further, VanLier's claims about the photo array shown to the victim are incorrect. For example, VanLier protests that he had the right to counsel while the police took the photograph used in the photo array.[4]

Similarly, to the extent that VanLier complains repeatedly about the search warrant executed by the police for his shoes and genetic markers, that evidence was not incriminating. And the jury was told the police came up dry. If anything, the search warrant's results helped Defendant at trial. The incriminating evidence, VanLier's shirt, was seized during an inventory search of a bookbag taken from VanLier when he was arrested.

While VanLier quibbles with the court's grammar when it defined

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[4] *Edwards v. Butler*, 882 F.2d 160, 164 (5th Cir. 1989)(Sixth Amendment right to counsel attaches at critical stages of criminal proceedings, which do not include taking of defendant's photograph)(citations omitted).

"restraint" and "liberty," the court's instructions were grammatically and legally correct. Furthermore, to the extent that the court defined for the jury words used in the indictment, that is what the court does. Besides, the issue in this case was whether the victim was attacked by VanLier. If the jury believed the victim's version of events, which it obviously did, then it was beyond dispute that VanLier restrained the victim and interfered with her liberty under any reasonable definition of those terms. As mentioned, VanLier intercepted the victim on her way home. He forced her down a railroad embankment against her will, and intentionally kept her in that secluded place through force and intimidation while he tried to rape her. The jury's misunderstanding the law cannot account for VanLier's conviction.

Finally, as to the four claims outlined above, it is easy for VanLier to blame his conviction on circumstances beyond his control, such as racism. That claim is difficult to disprove, especially in this case involving a white complaining witness and a black defendant. There is a historical basis for concern in these situations. But even VanLier cannot point to anything overtly racist about his trial. At worst, he argues that his race, homelessness and indigency worked against him with the jury. The court is satisfied that VanLier received a fair trial from a fair and impartial jury. As presented above, there was ample evidence to justify VanLier's conviction.

B. Ineffective Assistance of Counsel

Beyond the four claims presented above, VanLier also argues ineffective assistance of counsel, which is a proper argument under Rule 61. VanLier, however, fails to address the well established *Strickland v. Washington*[5] standards. Under *Strickland*, Defendant has the burden of overcoming the presumption that he received effective assistance.[6] In order to overcome the presumption, VanLier must show that his trial counsel's efforts fell below a reasonable, objective standard for criminal defense lawyers in this community. VanLier also must demonstrate how any substandard representation prejudiced him.[7] While VanLier outlines in colorful prose his claims about his trial counsel's shortcomings, VanLier attempts to meet *Strickland*'s standards only indirectly, at best.

Basically, VanLier's ineffective assistance of counsel claims fall into two categories. First, he complains about trial counsel's failure to file five pre-trial

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

[6] *Albury v. State*, 551 A.2d 53, 59 (Del. 1988) (citing *Strickland*, 466 U.S. at 689).

[7] *Miller v. State*, 2003 WL 23018933, at *2 (Del. Supr.) (Citing *Strickland*, 466 U.S. at 688); *Henry v. State*, 834 A.2d 826 (Del. 2003) (citing *Strickland*, 466 U.S. at 687).

motions. Three of those motions relate to his right to a speedy trial. It has already been established on direct appeal that Defendant's right to a speedy trial was not denied, nor did he suffer unfair prejudice during the delay between his indictment and trial.

Otherwise, Defendant complains that his trial counsel should have filed a motion for bail reduction sooner, and when the motion was filed it was "seriously flawed." Flawed or not, the bail reduction motion still has no bearing on whether VanLier received effective assistance of counsel at trial. That is especially true considering that the motion was filed by another lawyer. Moreover, if the motion had mistakes in it, such as VanLier's age, residence and whether he was employed, that point overlooks the motion's futility.

In reviewing a bail reduction motion, the bail setter will look at the Office of Pretrial Services' Case Report, if one is available. The Report on VanLier showed VanLier's age and residence. It also showed that VanLier has a criminal record in Kentucky, Georgia and Texas. The charges for which VanLier had been arrested in Kentucky included a rape in 1986, a burglary in 1988, an assault by strong arm in 1988 and stolen motor vehicle charges in 1993. The Report also showed that in Georgia, VanLier was arrested in 1995 and convicted for disorderly

conduct, criminal trespass and simple battery. In Texas, the report showed that VanLier was convicted in 1977 for assault causing bodily injury. Relying on its presentence investigative report, the court knew when it sentenced him that VanLier was convicted of less serious charges than the ones for which he was arrested. Nevertheless, taking VanLier's record and the nature of the current charges against him, the likelihood that his bail would have been reduced to an amount he could have posted was less than remote.

The above notwithstanding, the court will not dismiss VanLier's ineffective assistance of counsel claim as it relates to issues surrounding the photo identification procedures used by the police and VanLier's allegations that trial counsel forced VanLier to appear at trial in prison clothing despite the fact that he had street clothes available.

Under Rule 61(g), the court orders ***EXPANSION OF THE RECORD.*** Trial counsel shall respond within 30 days to the allegations of ineffective assistance of counsel as they relate to suppression issues and VanLier's attire at trial.

Consistent with Rule 61(g)(2), trial counsel shall make copies of trial counsel's response available to the State, which shall have ten days to admit or deny the allegations. Similarly, trial counsel shall provide a copy of his response to

VanLier, who shall have two weeks in which to respond directly to the materials submitted by trial counsel. The court will disregard and not consider any argument or other submission that goes beyond what is contemplated by this Order and Rule 61.

Meanwhile, as explained above, it plainly appears from the motion for postconviction relief and the record of prior proceedings that Defendant is not entitled to relief on any of the claims decided above and they are **SUMMARILY DISMISSED**. The Prothonotary shall notify Defendant of this Order. From this point on, the only pending issue concerns Defendant's ineffective assistance of counsel claim, as presented above.

IT IS SO ORDERED.

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_____ Judge

oc: Prothonotary (Criminal Division)
Edmund Hillis, Esquire
Donald Roberts, Deputy Attorney General
Shawn VanLier, DCC

tickle file: Hillis' expansion of record due 4/22/04
State to reply within 10 days = 5/4/04
VanLier will have two weeks to respond 5/18/04