IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 0204003496
	)	
JAMAH K. GROSVENOR	)	
	)	
Defendant.	)	

Submitted: December 23, 2003
Decided: March 30, 2004

O P I N I O N

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

Francis E. Farren, Esquire, Deputy Attorney General, Carvel State Building, 820 North French Street, Wilmington, Delaware 19801, for the State of Delaware.

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

Kevin J. O'Connell, Esquire, 831 N. Tatnall Street, Suite 200, Wilmington, Delaware 19801, trial counsel for the Defendant.

JURDEN, J.

Jamah K. Grosvenor (hereinafter "defendant" or "Grosvenor") filed the instant Motion for Postconviction Relief alleging ineffective assistance of counsel. For the reasons that follow, the defendant's Motion is **DENIED**.[1]

Factual and Procedural Background

Grosvenor was indicted on May 20, 2002 on the following charges: Robbery First degree (3 counts), Possession of a Firearm During the Commission of a Felony ("PFDCF") (6 counts), Aggravated Menacing (3 counts), Wearing a Disguise During the Commission of a Felony (2 counts), Conspiracy Second Degree (2 counts), Resisting Arrest, Endangering the Welfare of a Child, and Possession of a Deadly Weapon by a Person Prohibited. These charges were related to an armed robbery at Peddler's Pit Stop that occurred on April 5, 2002. Grosvenor was arrested for these crimes along with three other co-defendants: Robert Benson, Chris Gray, and Braheem Poteet.

After pleading guilty and being sentenced, Grosvenor did not file a direct appeal. Grosvenor filed the instant *pro se* Motion for Postconviction Relief on April 7, 2003, alleging ineffective assistance of counsel. After this Court requested written responses from the State and defendant's trial counsel, Kevin O'Connell,

[1] A separate Motion for Postconviction Relief filed by Defendant Grosvenor was recently dismissed by the Superior Court in a different case. *See State v. Grosvenor*, ID No. 0008020754, 2004 Del. Super. LEXIS 21, Carpenter, J., (Del. Super. Ct. January 30, 2004). In the other case, Grosvenor challenged the entry of his guilty plea to Burglary Third Degree and Assault Third Degree. The Court mentions this only to avoid any confusion between the two cases. The disposition of Grosvenor's other motion for postconviction relief has not influenced the Court's analysis of the instant motion.

trial counsel filed an affidavit in response to the defendant's allegations on August 12, 2003,[2] and the State submitted its Response to Defendant's Motion for Postconviction Relief on August 20, 2003.[3] Grosvenor filed a response to Mr. O'Connell's affidavit on September 23, 2003,[4] but claimed that he did not receive the State's Response.[5] Consequently, the Court forwarded a copy of the State's Response to the defendant.[6] The defendant then filed a reply to the State's Response on December 23, 2003.[7] Briefing is now complete and this matter is ripe for consideration.

Once the indictment in this case was issued, the Court placed Grosvenor on a "Fast Track" calendar because he was on probation at the time of the indictment.[8] According to the defendant's trial counsel, Mr. O'Connell, the State originally offered a plea bargain that included a recommendation for an eleven (11) year sentence (eight (8) of which would be mandatory) on two counts of PFDCF, one count of Robbery First Degree, and an admission that Grosvenor was in violation of probation.[9] According to the State, a plea offer of five (5) years Level V

[2] *See* Kevin J. O'Connell's Affidavit ("O'Connell Aff.") (Docket No. 21).
[3] *See* Letter from Francis Farren to the Court dated August 15, 2003, serving as the State's Response ("State's Response") (Docket No. 28).
[4] *See* Defendant's Response to Kevin J. O'Connell's Affidavit ("Defendant's First Reply") (Docket No. 26).
[5] *See* Defendant's letter filed November 3, 2003 (Docket No. 27).
[6] *See* Letter from the Court to Grosvenor dated December 2, 2003.
[7] *See* Grosvenor's Response to Francis Farren's Memorandum ("Defendant's Second Reply") (Docket No. 30).
[8] *See* State's Response at 2.
[9] *See* O'Connell Aff. at ¶4(c).

incarceration was offered to the first defendant to plead guilty and cooperate, but the State has no recollection of offering five years to Grosvenor because of his Fast Track status.[10] The plea offer of five (5) years was rejected by the other defendants.

Prior to the Final Case Review, all four defendants and their individual counsel were permitted to meet as a group. Each defendant was represented by a different attorney. Mr. O'Connell explains that the "reason for the meeting was the fear that each of the defendants did not want to accept what was a rather generous plea extended to them for fear that they would be labeled a snitch. It was our hope, that if they all accepted the reasonable plea offer, none would be forced to testify against the other."[11] At this Final Case Review, the State offered each defendant a plea to a seven (7) year term at Level V incarceration.

Grosvenor and one co-defendant, Chris Gray, elected to take advantage of the plea offer and Grosvenor was ultimately sentenced to seven (7) years in prison. The other two co-defendants, Robert Benson and Braheem Poteet, elected not to take the plea and eventually went to trial. Benson and Poteet were both convicted of *every* count in the indictment and were subsequently sentenced to serve the minimum mandatory term of twenty-four (24) years in prison.

[10] State's Response at 2, n.1.
[11] O'Connell Aff. at ¶1.

Summary of Defendant's Allegations

In the instant motion for postconviction relief, Grosvenor asserts several grounds of ineffective assistance of counsel. The defendant claims, *inter alia*, that (1) his co-defendant, Chris Gray, was coerced into signing the plea agreement, (2) all of his other state criminal charges were supposed to be dismissed as part of the plea bargain, (3) his trial counsel improperly refused to seek a suppression hearing, and (4) his trial counsel improperly refused to contact defense witnesses at his insistence.[12]

The Legal Standard for Claims of Ineffective Assistance of Counsel

The defendant's motion is not procedurally barred because it raises only claims of ineffective assistance of counsel and these claims have not been previously adjudicated.[13] Accordingly, this Court shall address defendant's substantive arguments.

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[12] *See* Motion for Postconviction Relief (Docket No. 15) at 3; *see also* Grosvenor's Affidavit ("Defendant's Aff.") attached to the Motion.

[13] When analyzing a motion for postconviction relief, the Court must first apply the procedural bars of Del. Super. Ct. Crim. R. 61(I) ("Rule 61") before considering the merits of the individual claims. *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) [citations omitted]. Normally, any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is thereafter barred. Rule 61(I)(3). However, the procedural bars set forth in Rule 61(I)(1)-(4) may be overcome if the defendant establishes a colorable claim that there has been a "miscarriage of justice" under Rule 61(I)(5). A colorable claim of miscarriage of justice occurs when there is a constitutional violation that undermines the fundamental legality, reliability, integrity or faimess of the proceedings leading to the judgment of conviction. This exception to the procedural bars is very narrow and is only applicable in very limited circumstances. A claim of ineffective counsel in violation of the Sixth Amendment to the United States Constitution, by its very nature, qualifies as such an exception. Under this exception, the defendant bears the burden of proving that he has been deprived of a "substantial constitutional right." *State v. Wilmer*, I.D. No. 9603002509, 2003 Del. Super. LEXIS 80 at *12-*13 (Del. Super. Feb. 28, 2003, amended March 12, 2003), *aff'd* 827 A.2d 30 (Del. 2003)).

Under the standard set forth in *Strickland v. Washington*,[14] the defendant must establish two factors in order to prevail on a claim of ineffective assistance of counsel. In the context of a guilty plea challenge, *Strickland* requires a defendant to show that: (1) counsel's representation fell below an objective standard of reasonableness, and (2) counsel's actions were so prejudicial "that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial."[15] The *Strickland* standard is highly demanding and, under the first prong of the test, there is a "strong presumption that the representation was professionally reasonable."[16] Under the second prong, the defendant must affirmatively prove prejudice.[17] To succeed on a claim of ineffective assistance of counsel, the defendant must not only make concrete allegations of cause and actual prejudice, he must also substantiate them.[18] As the United States Supreme Court has recognized, requiring a showing of "prejudice" from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel serves the fundamental interest in the finality of guilty pleas.[19]

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[14] *Strickland v. Washington*, 466 U.S. 668 (1984).
[15] *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997), citing *Albury v. State*, 551 A.2d 53, 60 (Del. 1988) (quoting *Hill v. Lockhart*, 474 U.S. 52, 58 (1985)); *see also Rose v. State*, 808 A.2d 1205 (Del. 2002).
[16] *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).
[17] *Albury,* 551 A.2d at 60 (citing *Strickland*, 466 U.S. at 693).
[18] *Younger v. State*, 580 A.2d 552, 556 (Del. 1990); *see also Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).
[19] *See Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

Having carefully reviewed the briefs, affidavits, and the file in its entirety, this Court believes that an evidentiary hearing is not warranted or desirable.[20] The record clearly indicates that the instant motion is without merit. As demonstrated below, defendant fails to satisfy either prong of the *Strickland* test. The defendant has not shown that his trial counsel's actions were unreasonable or that he suffered actual prejudice as a result of counsel's conduct. Accordingly, the defendant's Motion for Postconviction Relief is **DENIED.**

Analysis

By following his counsel's advice and accepting the plea offer, Grosvenor received only a seven (7) year term of imprisonment instead of the twenty-four (24) year term of imprisonment he could have received if he went to trial and was found guilty. The Court notes that his two co-defendants who rejected the plea offer and went to trial each received twenty-four (24) year sentences after they were convicted on *all* counts of the indictment.

Grosvenor claims that Mr. O'Connell coerced co-defendant Gray into taking a plea and testifying against Grosvenor. This claim is unfounded. The State filed a Motion to Withdraw Gray's plea after Gray reneged on his promise to testify

[20] *See* Del. Super. Ct. Crim. R. 61(h)(3) ("Summary disposition. If it appears that an evidentiary hearing is not desirable, the judge shall make such disposition of the motion as justice dictates."); *see also Rose v. State*, 808 A.2d 1205 (Del. Oct. 18, 2002) ("It is within the discretion of the Superior Court to determine whether an evidentiary hearing is needed in a postconviction proceeding.") (citing Del. Super. Ct. Crim. R. 61(h)).

truthfully. That motion was granted on April 4, 2003, and, on that same date, co-defendant Gray entered into a *new* plea agreement under which he would be imprisoned for eight (8) years. As the State correctly notes, Mr. O'Connell had nothing to do with Gray's plea and could not have coerced Gray into taking such a plea.[21] Therefore, Grosvenor's claim on this ground is without merit.

Grosvenor also asserts that a conflict of interest existed because Mr. O'Connell was not looking out for his client's individual best interests during the meeting before the Final Case Review. Grosvenor argues that by persuading all the defendants to accept a guilty plea, his attorney was looking out for his co-defendants' best interests. But, as explained by Mr. O'Connell, having all four co-defendants accept what amounted to a rather generous plea offer was in Grosvenor's best interests. Otherwise, Grosvenor's co-defendants might have testified against him, and he could have been confronted with the imposition of a substantially longer sentence.

Grosvenor cites *Thomas v. Foltz*[22] in support of his conflict of interest argument. *Thomas* is clearly distinguishable. In *Thomas*, all three co-defendants were represented by the same attorney, whereas here each of the four co-

[21] *See* State's Response at 3.
[22] 818 F.2d 476 (6th Cir. 1987).

defendants had their own counsel. Grosvenor's citation to *Underwood v. Clark,*[23] and the rule that "a defendant cannot be made to plead against his wishes, however wise such a plea would be," is also misplaced. On his Truth-in-Sentencing Guilty Plea Form ("TIS Form"), Grosvenor indicated that he freely and voluntarily decided to plead guilty and that neither his attorney nor anyone else had threatened or forced him to enter the plea.[24] Moreover, in contrast to his present contention, Grosvenor declared on his TIS Form that he was satisfied with his counsel's representation.[25] "In the absence of clear and convincing evidence to the contrary," Grosvenor is bound by his answers on the Truth-in-Sentencing Guilty Plea Form.[26] Grosvenor's claim on this ground is also without merit.

Grosvenor next argues that all of his other state criminal charges were supposed to be dismissed as part of the plea bargain, yet a few days after his plea in this case, he pled guilty to a charge of Possession of Cocaine in a separate case. As the plea agreement signed by the defendant clearly indicates, Grosvenor's guilty plea in this case resolved "all remaining charges on this indictment."[27] The written plea agreement clearly did not encompass charges outside of this particular indictment.

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[23] 939 F.2d 473 (7th cir. 1991). The Court notes that in *Underwood* the Seventh Circuit affirmed the denial of the defendant's habeas corpus petition.
[24] *See* Grosvenor's TIS Form.
[25] *Id.*
[26] *Somerville*, 703 A.2d at 632, citing *Fullman v. State*, 560 A.2d 490 (Del. Feb. 22, 1989); *see also, Evans v. State*, 795 A.2d 667 (Del. April 17, 2002) (requiring clear and convincing evidence); *Coverdale v. State*, 788 A.2d 527 (Del. Jan. 15, 2002) (also utilizing the clear and convincing evidence standard).
[27] *See* Grosvenor's Plea Agreement.

Grosvenor asserts that his counsel improperly failed to file a motion to suppress. Mr. O'Connell notes, however, that "there was nothing to suppress." Mr. O'Connell explains that some of the incriminating evidence (a hat and a gun) was found in a building that Grosvenor had no connection with, thus he had no reasonable expectation of privacy in the building.[28] Furthermore, Mr. O'Connell notes that, prior to being arrested, Grosvenor only gave a limited statement in response to police questions regarding his identity and where he was going. The defendant gave no custodial statement that the State intended to use against him at trial. There was no search of Grosvenor, his residence, or any other place in which he had a reasonable expectation of privacy.[29] There is simply no merit to this argument.

Grosvenor also asserts that his trial counsel failed to contact witnesses that could have helped in his defense. Grosvenor contends that he informed his attorney that on April 5, 2002, he "was in the area of South Gate Apartments for a second meeting with a white female named Cynthia" and that he "let Mr. O'Connell know that her number should be in [his] cellular phone."[30] Grosvenor also claims that he was dropped off at the South Gate Apartments by a friend named Cathy Padilla.

[28] O'Connell Aff. at ¶4(b).
[29] O'Connell Aff. at ¶3.
[30] Defendant's Aff. at 1.

Mr. O'Connell responds:

> [I]t is truthful that Mr. Grosvenor informed me that he was in the area of the Southgate Apartments on the morning of April 5, 2002 in order to meet a female [named] "Cynthia." He never indicated where she lived (other than Building No. 24) or any other identifying characteristics. An investigation of Building No. 24 revealed no one named Cynthia living there particularly at the location Mr. Grosvenor indicated to me in a letter dated July 29, 2002 ("it was the first door on the right, as soon as you go down the steps"). Mr Grosvenor never indicated to me that I could find this "Cynthia" by accessing his cellular phone. As to the "friend named Cathy Padilla" neither my independent recollection, nor any of my notes from conversations with Mr. Grosvenor, nor any of the letters sent to me by Mr. Grosvenor indicate that a friend named Cathy Padilla could testify that she had dropped Mr. Grosvenor at the Southgate Apartments on April 5, 2002.[31]

The defendant's claims that counsel failed to investigate potential defense witnesses are not factually supported, thus Grosvenor has failed to meet his burden of proving that he was denied a "substantial constitutional right."[32] Moreover, by pleading guilty, defendant gave up his trial rights, including the right to present evidence on his own behalf and to challenge the charges against him; therefore, even if defendant's unsupported allegations regarding his attorney's conduct in preparing for trial are accepted as true, Grosvenor has not shown that the result of the proceedings would have been different.[33] Grosvenor's "voluntary plea of guilty

[31] O'Connell Aff. at ¶4(a).
[32] *See Wilmer*, 2003 Del. Super. LEXIS at *13.
[33] *See Coverdale,* ORDER at ¶6.

constitutes a waiver of any defects or errors occurring prior to the entry of his plea."[34] He is not entitled to relief on these grounds.

Conclusion

There is no support for Grosvenor's allegations of ineffective assistance of counsel. Grosvenor's allegations in his Motion for Postconviction Relief fail to establish that counsel's conduct was professionally unreasonable or that the defendant suffered any prejudice.[35] Given the circumstances, Grosvenor should be relieved that he was offered a plea and received only seven (7) years of incarceration as opposed to the twenty-four (24) years of incarceration that two of his co-defendants received after going to trial. In light of all this, the Court finds that the "plea should be sustained on the ground that it was sought by defendant and freely taken as part of a bargain which was struck for the defendant's benefit."[36]

For the foregoing reasons, defendant's Motion for Postconviction Relief is **DENIED**.

IT IS SO ORDERED.

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Jan R. Jurden, Judge

[34] *Coverdale,* ORDER at ¶4 (citing *Downer v. State*, 543 A.2d 309, 312-313 (Del. 1988)).
[35] *See Strickland v. Washington*, 466 U.S. 668, 688 (1984).
[36] *Downer*, 543 A.2d at 312 (quoting *People v. Foster*, 225 N.E.2d 200, 202 (1967) (upholding a guilty plea to a nonexistent offense)).