

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

P.O. Box 746  
COURTHOUSE  
GEORGETOWN, DE 19947

June 16, 2004

Curtis E. Wells  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

Andre M. Beauregard, Esquire  
Brown, Shiels, Beauregard & Chasanov  
401 Rehoboth Avenue  
Rehoboth Beach, DE 19971

Stephanie A. Tsantes, Esquire  
Department of Justice  
114 E. Market Street  
Georgetown, DE 19947

Veronica O. Faust, Esquire  
Department of Justice  
114 E. Market Street  
Georgetown, DE 19947

RE: State of Delaware v. Curtis E. Wells  
Def. ID# 0112009733A

**Memorandum Opinion - Motion for Postconviction Relief**

Date Submitted: **May 4, 2004**

Dear Mr. Wells and Counsel:

This is my decision on defendant Curtis E. Wells' ("Wells") motion for postconviction relief. Wells was charged by Grand Jury Indictment on February 11, 2002 with one count each of Reckless Endangering in the First Degree, Burglary in the Third Degree, Theft, Criminal Mischief, Burglary in the Second Degree, Robbery in the First Degree, Burglary in the First Degree, Wearing a Disguise During the Commission of a Felony, two counts of Possession of a Firearm During the Commission of a Felony, three counts of Aggravated Menacing, and four counts of Conspiracy in the Second Degree. Wells went to trial on the following charges: Burglary in the Second Degree, two counts

of Conspiracy in the Second Degree, Robbery in the First Degree, Possession of a Firearm During the Commission of a Felony, Burglary in the First Degree, Aggravated Menacing, and Wearing A Disguise During the Commission of a Felony. After a five-day jury trial, Wells was found guilty on December 16, 2002 of Robbery in the First Degree, Possession of a Firearm During the Commission of a Felony, Burglary in the First Degree, Burglary in the Second Degree, Aggravated Menacing, Wearing a Disguise During the Commission of a Felony, and two counts of Conspiracy in the Second Degree. I sentenced Wells on January 24, 2003 to 23 years at supervision level V, suspended after serving eight years at supervision level V for 15 years of declining levels of probation. Wells filed an appeal with the Supreme Court on February 14, 2003. The Supreme Court affirmed Wells' convictions on October 2, 2003.<sup>1</sup> Wells filed his motion for postconviction relief on April 8, 2004. This is Wells' first motion for postconviction relief and it was filed in a timely manner. Therefore, it is not barred by Superior Court Criminal Rule 61(i)(2).

Wells has set forth three grounds for relief, all of which essentially allege ineffective assistance of counsel. More specifically, Wells alleges that his attorney denied him (1) the right to subpoena witnesses, (2) the right to testify, and (3) his request for evidentiary and suppression hearings. Wells was represented at trial by Andre M. Beauregard, Esquire ("Beauregard"). In order to prevail on his claim for ineffective assistance of counsel pursuant to Superior Court Criminal Rule 61, Wells must show (1) that Beauregard's actions fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for any errors made by Beauregard, the outcome of the proceedings would have been different.<sup>2</sup> Mere allegations of ineffectiveness will

---

<sup>1</sup>*Wells v. State*, Del. Supr., No. 66, 2003, Jacobs, J. (Oct. 2, 2003).

<sup>2</sup>*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

not suffice. Wells must make specific allegations of actual prejudice and substantiate them.<sup>3</sup> Moreover, any review of Beauregard's representation is subject to a strong presumption that his representation of Wells was professionally reasonable.<sup>4</sup>

### **I. Denial of Right to Subpoena Witnesses**

Wells alleges that his right to subpoena witnesses was denied. Wells contends that he gave Beauregard a list of six or seven key witnesses who were very important to his trial but none of these witnesses were subpoenaed. Wells has not identified any of the witnesses, nor has he indicated what they would say on his behalf. Rule 61(b)(2) requires that Wells "set forth in summary form the facts supporting each of the grounds thus specified."<sup>5</sup> Therefore, his allegations are not specific enough.

Wells also failed to make specific allegations of actual prejudice and substantiate them. Beauregard's representation of Wells is subject to a strong presumption that it was professionally reasonable. Wells has failed to show otherwise. Moreover, Beauregard recalls that both Wells' mother and father testified on his behalf that he was at his home trimming the Christmas tree when the crimes were committed. Beauregard also recalls that it was Wells who believed that no other witnesses were necessary because he was at home when the crimes were committed. Therefore, this claim fails.

---

<sup>3</sup>*Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996); *Younger v. State*, 580 A.2d 552, 555-56 (Del. 1990).

<sup>4</sup>*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

<sup>5</sup>Super. Ct. Crim. R. 61(b)(2).

## **II. Denial of Right to Testify**

Wells alleges that Beauregard refused to let him testify on his own behalf and refused to call any witnesses on his behalf. This is factually incorrect. Beauregard specifically recalls advising Wells of the option to testify or not and the ramifications of either decision. Beauregard recalls that Wells chose not to testify. Furthermore, although Wells' mother, Joanna Starkey, was subpoenaed by the State, Beauregard also called her to testify on behalf of Wells. Thus, this claim is without merit.

## **III. Suppression of Favorable Evidence**

Wells contends that Beauregard refused his request for evidentiary and suppression hearings. However, Wells has both failed to identify what should have been suppressed and to indicate why it should have been suppressed. Therefore, his allegation is not specific enough. Upon review of the police reports and arrest warrants, Beauregard believed that an issue did not exist as far as suppression was concerned. Wells has failed to show any actual prejudice as a result of Beauregard's decision. Moreover, Wells has not shown that Beauregard's actions fell below an objective standard of reasonableness and that but for any error made by Beauregard, the outcome of the trial would have been different. Therefore, this claim also fails.

## **CONCLUSION**

Wells' Motion for Postconviction Relief is denied for the reasons stated herein.

**IT IS SO ORDERED.**

Very truly yours,

E. Scott Bradley

ESB:tl

cc: Prothonotary's Office