

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. Henley Graves
Resident Judge

SUSSEX COUNTY COURTHOUSE
THE CIRCLE
P.O. BOX 746
GEORGETOWN, DE 19947
(302) 856-5257

May 28, 2004

N440
Travis Daniels
Sussex Correctional Institution
P. O. Box 500
23203 Dupont Boulevard
Georgetown, DE 19947

RE: Defendant ID No. 9804016784 (R-1)

Dear Mr. Daniels:

On April 27, 2004, the Court received a Motion for Postconviction Relief pursuant to Rule 61. You complain about the process in which you were convicted of a violation of probation on March 24, 2004 and the sentence you received arising from same. Also, you make an argument as to why your sentence should be modified. This is the Court's decision denying your request for relief.

HISTORY

When you were originally convicted on these charges, you were a young man and as I recall a good athlete. Many people spoke in your behalf. Nevertheless, you were convicted of a brutal assault on your girlfriend. As I recall you gave her a thorough pummeling, including in the face. This past year you picked up new charges. Those charges included an assault on a female. There was also a violation of probation for having contact with the original victim, contrary to the Court's no contact order.

You were found in violation of probation based upon the no contact order. The new charges eventually went away because the alleged victim did not wish to have you prosecuted and did not cooperate with the prosecutor. In fact, she did not show at Court and a material witness capias was issued for her. I wanted testimony as to the events of the allegations concerning the second incident before sentencing you on the violation of probation. A full hearing took place on February 19, 2004 with the testimony of Latisha Lake, Derrick Calloway, Tremaine Collins, Josefina McGinley, and finally your testimony. You basically denied all responsibility. As I noted at the hearing, somebody punched her and knocked her unconscious and the testimony supported that it was you. I also told you that I was satisfied that she probably was upset with you and may have struck you first; but you had plenty of time to cool down and walk away. You are a big guy and she's not, and there was absolutely no reason for you to punch her out. Based upon your violation of probation and the evidence the Court

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had at the hearing, I sentenced you under Criminal Action No. 98-05-0603 to 3 years and 3 months pursuant to §4204(k). As to the 98-05-0602, you were sentenced to one-year suspended for one year Level 4 Home Confinement.

RULE 61 ALLEGATIONS

You claim that your attorney was ineffective at the violation of probation hearing. You report that he told you he thought you would be released for time served because of the technical nature of the violation of contacting the original victim.

In making a claim of ineffective assistance of counsel, you must prove two things. First, you must establish that your attorney's conduct fell below an objective standard of reasonableness. You must establish that your attorney did something wrong. Then, you must establish that the mistake that your attorney made actually prejudiced you. This means that you must establish that but for your attorney's mistakes, the outcome would have probably been different. Strickland v. Washington, 466 U. S. 668 (1984). You have not attempted to address this. You make conclusory allegations as to your attorney's performance which are not supported by the record. Your claim of ineffective assistance of counsel is denied.

You complain that I sentenced you based upon the events concerning the new charges which were ultimately dismissed. You complain that the new charges were not a part of your original violation of probation and that therefore the application of 11 Del. C. §4204(k) for the 3 year and 3 month period was inappropriate.

Probation is a matter of grace. Probation is granted with an expectancy that people will behave themselves. You had notice that the Court was concerned about the new charges and that there were allegations that you had beaten a girlfriend or an ex-girlfriend. Since that is the same conduct for which you were originally sentenced, I requested and had a hearing when the witnesses became available. There is a different standard of proof between being found guilty of a new charge beyond a reasonable doubt and being adjudicated guilty following a hearing on a violation of probation. I am satisfied that you not only violated your probation for a breach of the no contact order but that you also assaulted and beat another victim. In view of this, the mandatory portion of the sentence was appropriate.

You complain generally about the hearing and about hearsay testimony. There was a full hearing in which you, through your attorney, had the opportunity to cross-examine the State's witnesses. You were not convicted based upon hearsay testimony. You were convicted based upon your admission that you breached the no contact order and based upon the testimony of persons who were present and subject to cross-examination at the subsequent hearing which focused on the new charges. For these reasons, your Motion for Postconviction Relief is denied.

In Ground 4, you request a modification of sentence asking that I allow you to get out of jail and work to support your daughter. In Ground 5, you note that you have previously served jail and therefore you have "served my debt to society".

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After considering these Motions for Modification of Sentence, I am satisfied the sentence imposed was reasonable and your request for a modification of sentence is denied.

Defendant's Rule 61 Motion is denied. Defendant's Motion to Modify is denied.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj

cc: Prothonotary
Melanie C. Withers, Esquire
E. Stephen Callaway, Esquire