

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	ID No.0103012308
)	
STEPHEN R. WINN)	
)	
Defendant.)	

Submitted: September 15, 2004
Decided: December 23, 2004

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

ORDER

Donald Roberts, Deputy Attorney General, Wilmington, Delaware.

Stephen R. Winn, *pro se* Defendant, Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware.

CARPENTER, J.

On this 23rd day of December, 2004, upon consideration of Defendant's *pro se* motion for postconviction relief, it appears to the Court that:

1. Stephen R. Winn ("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, John S. Edinger ("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 February 25, 2002, a jury trial was held in New Castle County, Delaware, and Defendant was found guilty of Rape in the First Degree, Kidnaping in the First Degree, Assault in the Second Degree, Terroristic Threatening and Criminal Contempt. On May 31, 2002, this Court sentenced the Defendant to 47 years in prison.

Subsequently, the Defendant filed a direct appeal to the Supreme Court of Delaware challenging his conviction. Defendant's only contention was that the trial court abused its discretion when it allowed the victim's prior consistent statement into evidence, which Defendant argued was cumulative and unduly prejudicial.¹ After considering Defendant's sole argument, the Supreme Court concluded on March 19, 2003, that the Superior Court acted well within its discretion in admitting the victim's

¹*Winn v. State*, 829 A.2d 142 (Del. 2003).

statement and affirmed the judgment of the Superior Court.² Thereafter, Defendant filed a motion for modification of sentence, which the Court denied on July 22, 2003.

3. Presently before the Court is Defendant's *pro se* motion for postconviction relief, filed on September 15, 2003. Defendant claims that he was denied effective assistance of counsel and raises the following six grounds for relief:

- (i) Counsel's representation was perfunctory at best;
- (ii) Counsel failed to conduct a meaningful investigation;
- (iii) Counsel failed to secure, obtain, or share discovery with Defendant;
- (iv) Defendant did not review an audio tape of the telephone conversation between the Defendant and the victim before trial;
- (v) Counsel did not subpoena Defendant's witnesses;
- (vi) Counsel did not permit Defendant to pick the jury.

After receiving Defendant's motion for postconviction relief, this Court ordered Counsel to submit an affidavit responding to the allegations of ineffective assistance of counsel. On February 18, 2004, Counsel filed the affidavit, in the form of a letter, which will be referred to throughout this opinion for the purpose of quelling Defendant's claims.

4. Before addressing the merits of any claims raised in a motion seeking postconviction relief, the Court must apply the rules governing the procedural

²*Id.*

requirements of Superior Court Criminal Rule 61(i).³ There are several procedural grounds which may bar a motion for postconviction, but none of those grounds are applicable. As a result, the Court is required to proceed to the substance of Defendant's motion to determine whether it presents a colorable claim of a constitutional violation that undermined the "fundamental legality, reliability, integrity or fairness of the proceedings."⁴

5. To establish ineffective assistance of counsel, the Defendant must satisfy the two-part test set forth in *Strickland v. Washington*.⁵ The Defendant must establish, by a preponderance of the evidence⁶: (1) that counsel's representation fell below an objective standard of reasonableness; and (2) that there is a reasonable probability that the result of the proceedings would have been different had counsel not committed such unprofessional errors.⁷ Under the first prong, the Court will indulge a strong presumption that counsel's representation was professionally reasonable.⁸ In addition, Delaware has held that a defendant must make "concrete

³See *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)).

⁴*Id.*; See *State v. Scott*, 2002 WL 485790, at *3 (Del. Super.).

⁵466 U.S. 668 (1984).

⁶*State v. Wright*, 653 A.2d 288, 294 (Del. Super. Ct. 1994).

⁷*Albury v. State*, 551 A.2d 53, 58 (Del. 1988).

⁸*Id.* at 59.

allegations of actual prejudice” and substantiate them or risk summary dismissal in claims of ineffective assistance of counsel.⁹ Defendant asserts six grounds to support his claim and the Court will address each *seriatim*.

6. First, the Defendant alleges that his “representation was perfunctory at best.”¹⁰ Counsel contends that, while it is impossible to calculate the number of hours that the Public Defender’s Office spent preparing Defendant’s case, the number is nonetheless significant. Counsel states that Public Defender Investigator, Mr. Raymond Scott, spent many hours meeting with the Defendant, interviewing witnesses and collecting evidence. During the investigation, Scott prepared twenty-four memoranda for Counsel regarding his evidentiary findings.

In addition, Assistant Public Defender Lisa Schwind, a forensic nurse, reviewed the victim’s hospital records and prepared a report for Counsel. Counsel met with the Defendant on approximately eight occasions and sent the Defendant five letters regarding his case. In preparation for Defendant’s trial, Counsel reviewed police reports, medical reports, investigative reports, tapes, transcripts, conducted interviews with four of Defendant’s witnesses and attempted to contact five other witnesses. The record reveals that Counsel represented the Defendant in a

⁹See *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

¹⁰Def.’s R. 61 Mot. at 3.

professional and competent manner. Counsel and the Public Defender's Office spent hours collecting evidence, preparing reports and memoranda and meeting with the Defendant. As a result, Defendant has failed to meet the requisite standard to establish ineffectiveness set forth in *Strickland*.¹¹

7. Next, Defendant claims that Counsel failed to conduct a meaningful investigation. However, that contention is simply without merit. Counsel responds that, of the eleven witnesses provided by the Defendant, every witness, with the exception of one who could not be located, was contacted by the Public Defender's Office. Furthermore, in preparing Defendant's case, Counsel enlisted the services of both the Public Defender's Office Investigator and another Assistant Public Defender, with an expertise in forensic nursing. Therefore, Defendant's claim that Counsel's investigation was inadequate lacks merit.

8. Third, Defendant asserts that Counsel failed to obtain and share discovery materials with the Defendant. First the Court wants to be clear that while it is a good practice, there is no requirement that counsel share discovery material with the defendant. In addition, the scope of discovery and whether the State has complied with its obligations are litigation decisions of counsel and not the defendant. However, in this case neither Counsel or the Court is aware of any

¹¹*Strickland v. Washington*, 466 U.S. 668 (1984).

discovery violations and discovery material was provided to the Defendant on May 10, 2001, May 21, 2001, and February 15, 2002.

While Counsel agrees that it discussed the subject of pleading guilty with the Defendant, it did so only after weighing the State's evidence against the merits of the Defendant's defense. In spite of the Defendant's complaint, the Court finds that if Counsel had not explored reasonable resolutions of the case with his client, it would have been a violation of his professional responsibility and would have subjected him to a claim of ineffective practice. Here counsel did what was required, and if the Defendant had taken the time to listen, counsel's advice in all likelihood would have resulted in a more favorable outcome for the Defendant. Counsel recalls that Defendant resisted Counsel's advice so vehemently that he walked out of one interview on January 2, 2002, in which Counsel tried to discuss the possibility of a plea. Defendant's claim fails because the evidence reveals that Counsel provided the Defendant with discovery even though he had no obligation to do so and discussed all aspects of the case with Defendant.

9. Fourth, Defendant contends that he was prevented from reviewing an audio tape of a telephone conversation between himself and the victim and a variety of other evidence before it was presented at trial. He claims that this deprivation violated Superior Court Criminal Rule 16. Rule 16 requires the State to disclose

certain kinds of evidence to the defendant. Simply because his counsel and not him reviewed the tape before trial does not rise to a discovery violation. Counsel asserts that it prepared notes of the tape and shared them with the Defendant on February 15, 2002. Nothing more is required but the record also establishes that Counsel met with the Defendant several times, and sent the Defendant several letters addressing the evidence in the case. Again counsel, not the defendant, is given the responsibility of trying the case and Counsel here did more than what is required regarding his contact with the Defendant. As a result, Defendant's fourth ground for relief is without merit.

10. Fifth, Defendant argues that Counsel failed to subpoena Defendant's witnesses. Counsel retorts that all of the Defendant's witnesses were subpoenaed, and of those that appeared, all were called to testify with the exception of those whom Counsel believed had nothing of value to contribute. Specifically, Defendant contends that Kevin Winn was not subpoenaed. Winn, however, was subpoenaed and appeared. He was not called to testify because Counsel and Defendant decided jointly that this testimony would be of little value and might actually harm Defendant's case. In any event, such decisions are litigation ones which are the exclusive province of counsel to make. Therefore, Defendant's fifth ground for relief fails.

11. Finally, Defendant alleges that Counsel denied him the opportunity to select the jury. Counsel states in his affidavit that it usually makes the decisions regarding jury selection, but also considers the defendant's views. This again is all that is required. Counsel claims that Defendant showed no interest in the selection process until two or three of the challenges had been exercised. Afterwards, Counsel states that he considered the Defendant's opinion when it was offered. As a result, Defendant's final allegation fails to muster support for his ineffective assistance of counsel claim.

12. After reviewing all six grounds of Defendant's ineffective assistance of counsel claim, the Court concludes that neither *Strickland*¹² prong has been established. As a result, the Defendant is not entitled to postconviction relief and the motion is hereby **DENIED**.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.

¹²*Strickland*, 466 U.S. 668 (1984).