

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

STATE OF DELAWARE,                    )  
  )  
                  v.                            )  
  )     ID No. 0309011756  
DEAN CARTER,                            )  
  )  
                  Defendant.                )

**ORDER**

Submitted: January 11, 2005  
Decided: February 22, 2005

*Upon Defendant's Motion for Postconviction Relief*

**DENIED**

Defendant Dean Carter moved for postconviction relief from his August 4, 2004 conviction for Possession of a Firearm During Commission of a Felony ("PFDCF"). Defendant filed a *pro se* motion for postconviction relief on January 11, 2005, wherein he claims ineffective assistance of counsel. Defendant asserts three grounds for relief in support of his ineffective assistance of counsel contentions: (1) Defendant's attorney never informed the Defendant of Delaware Superior Court Criminal Rule 16 Notice of Discovery; (2) Defendant asserts that his attorney advised him not to take an offered plea and never informed him of the potential risks and consequences associated with not taking the offered plea, thus

violating the Rules of Professional Responsibility; and (3) Defendant claims that his attorney should have attacked certain evidentiary issues prior to trial.

To prevail on a claim of ineffective assistance of counsel, a defendant bears the burden of showing that counsel's representation fell below an objective standard of reasonableness and that the deficiencies in counsel's representation caused actual prejudice.<sup>1</sup> Prejudice is defined as: "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different."<sup>2</sup> This standard is highly demanding and leads to a strong presumption that the representation was professionally reliable.<sup>3</sup>

The Defendant's Motion for Postconviction Relief is procedurally barred under Superior Court Criminal Rule 61(i)(3).<sup>4</sup> Defendant's claims were not asserted in the proceedings leading to his judgment of conviction. This Motion is the first time Defendant has raised his claims. Defendant has failed to demonstrate that there was cause or prejudice sufficient to excuse the procedural default. There is no showing of a "miscarriage of justice because of a constitutional violation that

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<sup>1</sup> *Pennewell v. State*, 2005 Del. LEXIS 46, at \*3.

<sup>2</sup> *Id.*

<sup>3</sup> *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

<sup>4</sup> "Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless movant shows (A) Cause for relief from the procedural default and (B) Prejudice from violation of the movant's rights.

undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”<sup>5</sup>

Defendant also alleges his attorney did not “make one motion to suppress” or “make one illegal search and seizure argument.” The record does not indicate that Defendant’s attorney should have made such a motion or argument.

Defendant asserts that his attorney “never filed not one motion.” This is incorrect. Mr. Ramunno filed a Motion for Reduction of Bail on October 6, 2003 and a Motion for Judgment of Acquittal on April 25, 2004.

Defendant has failed to satisfy his burden of showing that his attorney was objectively unreasonable in his representation. Accordingly, it is unnecessary to determine whether Mr. Ramunno’s representation prejudiced Defendant.

Assuming, however, Defendant could satisfy his burden, Defendant’s claims of ineffective assistance of counsel fail because he has not demonstrated that he was prejudiced as a result of alleged errors on the part of his attorney.

**THEREFORE**, pursuant to Rule 61(i)(3), Defendant’s motion is procedurally barred, and Defendant has failed to demonstrate the existence of a constitutional violation resulting in a miscarriage of justice or undermining the fundamental fairness of the proceedings as required by Rule 61(i)(3). Defendant's

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<sup>5</sup> See Super. Ct. Crim. R. 61(i)(5).

Motion for Postconviction Relief pursuant to Delaware Superior Court Rule 61 is hereby **DENIED**.

**IT IS SO ORDERED.**

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The Honorable Mary M. Johnston