IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	ID. No. 0101010946
	)	
STEVEN W. KRAFCHICK,	)	
	)	
Defendant.	)	
	)	

OPINION AND ORDER

On the Defendant's Motion for Post-conviction Relief

Submitted: November 15, 2004
Decided: March 8, 2005

Marsha J. White, Esquire, and Maria T. Knoll, Deputy Attorneys General, Department of Justice, 820 North French Street, Wilmington, DE 19801.

Edward C. Pankowski, Jr., Esquire, 1211 King Street, Wilmington, Delaware, 19801.

Steven W. Krafchick, Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware 19977, Defendant.

TOLIVER, JUDGE

Presently before the Court is the motion filed by the Defendant, Steven W. Krafchick, seeking post-conviction relief pursuant to Superior Court Criminal Rule 61.

FACTS AND PROCEDURAL POSTURE

On February 26, 2001, the Defendant was indicted by the grand jury and charged with Murder First Degree and related offenses arising out of the death of his wife, Dawn Krafchick. There was no dispute about the fact that both were employed at the Manor Park Restaurant in New Castle, Delaware, where Ms. Krafchick was stabbed to death by the Defendant on January 15, 2001. Trial began with jury selection on February 5, 2002 and continued until February 13, 2002, when the Defendant elected to enter a plea to Murder Second Degree and Possession of a Deadly Weapon During the Commission of a Felony.

Following the entry of his pleas, the Defendant asked the Court to order a pre-sentence investigation prior to imposing the sentence. The Court declined to do so, and over the objection of the defense, the Court proceeded to impose sentence. Specifically the Defendant was sentenced to a total of forty years in prison followed by six months of probation. Thirty of the forty years were to be served as a

period of mandatory incarceration.[1] The Defendant's motion to reduce or otherwise modify the sentence imposed was denied by this Court on May 24, 2002.

The Defendant then lodged an appeal with the Delaware Supreme Court. On December 16, 2002, this case was remanded to allow this Court to set forth with particularity the reasons for imposing a sentence that exceeded the SENTAC guidelines. A response to the order of remand was filed on February 28, 2003. The Defendant's conviction and sentence were affirmed by the Supreme Court on May 29, 2003.

The Defendant filed the instant motion on May 7, 2004 seeking to withdraw his pleas and presumably proceed to trial once more.[2] An exchange of briefs and memoranda followed. Having now had the opportunity to review those submissions, that which follows is the Court's response to the issues so

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[1] The Sentencing Accountability Commission ("SENTAC") guidelines recommended ten years for the conviction of Murder Second Degree and two to five years on the PDWDCF conviction. *See* Del. Sent'g Accountability Comm. 2002 Benchbook 19-20. The recommendations were not binding on the Court. The minimum sentences to be served by statute were and are ten and two years respectively on those offenses. *See* 11 *Del. C.* §§ 635 & 4205(b)(2).

[2] It appears Defendant is attempting to withdraw his guilty plea based upon the standard set forth in Superior Court Criminal Rule 32(d). Def. Mot., D.I. 58, at 2,3. Defendant claims he should be allowed to withdraw his guilty plea for any "fair and just reason". Super. [Cite]. Crim. Rule 32(d). Rule 32(d) states that the standard of "fair and just reason" is only applicable to withdrawing a guilty plea before sentencing occurs. Defendant was sentenced in February of 2002, over three years ago. The only avenue available to defendant at this time is a post conviction motion under Rule 61. *See*, Super. [Cite]. Crim. Rule 61(a)(1).

presented.

DISCUSSION

Before the Court can reach the merits of a motion for post-conviction relief, the movant must first overcome the substantial procedural bars contained in Superior Court Criminal Rule 61(I).[3] Under Rule 61(I)(1), post-conviction claims for relief must be brought within three years of the movant's conviction becoming final.[4] Further, any ground for relief not asserted in a prior post-conviction motion is thereafter barred unless consideration of the claim is necessary in the interest of justice.[5] Similarly, grounds for relief not asserted in the proceedings leading to judgment of conviction are thereafter barred, unless the movant demonstrates: (1) cause for the procedural default, and (2) prejudice from any violation of the movant's rights.[6] Any ground for relief that was formerly adjudicated in the

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[3] *Flamer v. State*, 585 A.2d 736, 745 (Del. 1990); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990); *Saunders v. State*, 1995 WL 24888, at *1 (Del. Supr.).

[4] Super. Ct. Crim. R. 61(i)(1).

[5] Super. Ct. Crim. R. 61(i)(2).

[6] Super. Ct. Crim. R. 61(i)(3).

proceedings leading to judgment of conviction or in a prior post-conviction proceeding is thereafter barred from consideration.[7]

The procedural bars set forth in Rule 61(I)(1)-(4) may be lifted 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 fairness of the proceedings leading to the judgment of conviction.[8] This exception to the procedural bars is very narrow and is only applicable in very limited circumstances.[9] The defendant bears the burden of proving that he has been deprived of a "substantial constitutional right."[10] A claim of ineffective assistance of counsel in violation of the Sixth Amendment to the United States Constitution, by its very nature, qualifies as just such an exception.[11]

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7 Super. [Cite]. Crim. R. 61(I)(4).

8 Super. [Cite]. Crim. R. 61(I)(5).

9 *Younger*, 580 A.2d at 555.

10 *Id.*

11 *Mason v. State*, 725 A.2d 442 (Del. 1999); *State v. McRae*, 2002 WL 31815607, at *5 (Del. Super. [Cite].).

Under the standard outlined in *Strickland v. Washington*[12], two factors must be established in order to prevail on a claim of ineffective assistance of counsel. First, the Defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness. Second, he or she must show that counsel's actions were prejudicial to the defense, creating a reasonable probability that, but for counsel's error, the result of the proceeding would have been different.[13] 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."[14] The Defendant must also "[o]vercome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy."[15]

In the instant case, the Defendant's motion was filed well within the statutorily prescribed time period. This is also the first post-conviction relief sought by the Defendant and therefore raises no issues from a prior adjudication or

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12 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674, (1984).

13 *Id.* at 694.

14 *Stone v. State*, 690 A.2d 924, 925 (Del. 1996); *Flamer*, 585 A.2d at 753.

15 *Strickland*, 466 U.S. at 689.

motion. The Court must therefore proceed to examine the merits of the Defendant’s claims, all of which appear to allege ineffective assistance of counsel. Unfortunately for the Defendant, they are all without merit. .

The Defendant raises three primary arguments in his motion relating to ineffective assistance of counsel. First, he alleges that due to ineffectiveness of his attorney, he was coerced and acted under duress at the time he entered his guilty plea. As a result, the plea was not entered knowingly and voluntarily. Second, the Defendant contends his attorney failed to investigate his case and develop mitigating evidence to support the contention that he acted under extreme emotional distress. Third, the Defendant alleges that defense counsel allowed the Court to enter a disproportionate sentence and therefore was ineffective. As a result of those transgressions, individually and collectively, the plea was not knowingly and voluntarily entered.

Defendant’s first claim of ineffective assistance of counsel is without factual support in the record. While the Defendant argues his counsel did not communicate with him throughout the plea negotiations, it appears that the Defendant’s attorney fully informed the Defendant of all

negotiations with the State regarding the plea agreement and their implications. In fact, the Defendant's attorney asserts that is was the Defendant who asked counsel to approach the State about the possibility of a plea bargain. The Defendant's attorney also contends that the Defendant spoke with his family and was given the opportunity to "sleep on it" the night before making the final decision regarding his guilty pleas. The Defendant has not denied these assertions or offered any evidence to the contrary.

Before the Defendant entered his pleas, he and the Court engaged in a colloquy.[16] The following portion of that exchange is particularly helpful in addressing the Defendant's argument in this regard:

> THE COURT: . . . Do you understand that you had a right, and you're giving up by pleading guilty; you will not have a trial and you waive or give up your constitutional right to be presumed innocent, to a speedy and public trial, to a trial by jury, to hear and question the witnesses against you, to present evidence in your defense, to testify or not to testify, and to appeal to a higher court? Do you understand that?
> THE DEFENDANT: Yes Sir.
> . . .
> THE COURT: Sir, do you have any questions regarding either document or any other

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[16] The plea colloquy was conducted pursuant to Super [Cite]. Crim Rule. 11.

> aspect of this matter?
> THE DEFENDANT: No, Your Honor.
> THE COURT: Is anybody forcing you to do this, sir?
> THE DEFENDANT: No, sir
> THE COURT: Are you doing this of your own free will?
> THE DEFENDANT: Yes, sir.
> THE COURT: Have you fully discussed this matter with your attorneys and are you satisfied with their representation?
> THE DEFENDANT: Yes, sir.
> THE COURT: And, again, do you have any questions for the Court regarding any aspect of this matter?
> THE DEFENDANT: Just have mercy on me, sir.
> . . .
> THE COURT: Do you understand the consequences of what you are doing?
> THE DEFENDANT: Yes, sir.
> THE COURT: Now, Mr. Krafchick, I'm going--in terms of a plea itself, I know you discussed it with your attorneys and I know, indeed, according to Mr. Pankowski, you proposed it or at one point had considered it previously. And I believe your plea is a knowing and intelligent and voluntary one, given the circumstances, and I do so accept the same. . . .[17]

The Defendant argues that he would have answered differently but did not understand the colloquy because of the ineffective assistance he received from his attorney. The Defendant is nevertheless bound by his statements unless he

[17] Plea Tr., at 6-8.

offers evidence which would invalidate the same.[18] Because the Defendant is again unable to direct the Court's attention to any such evidence in the record, he can not escape the effect of the representations he made to the Court. Nor has he been able to explain exactly how and/or why he was confused.

In light of these circumstances, the Court must conclude that the Defendant's attorneys acted reasonably under the circumstances and that the result would not have been different if counsel's performance was deemed to have been somehow deficient. The Court finds that the plea was knowingly and voluntarily entered. They were not the product of coercion or anything other than the exercise of free will by the Defendant.

The Defendant's second challenge involves the claim that his psychological health was not properly investigated by counsel and presented at trial. The Defendant contends that if he had continued with his trial and called the appropriate witnesses, including himself, the jury would have been convinced of his "extreme emotional distress." That contention is simply not persuasive.

The witnesses were not called because the Defendant

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[18] *Bruno v. State*, 758 A.2d 933 (Del. 2000); *Fullman v. State*, 560 A.2d 490 (Del. 1989).

entered a plea prior to the presentation of any defense in his case. What the Defendant would or could have put before the jury at this point is at best conjecture and is not supported by the record. He elected not to proceed and must live with that choice.

In addition, defense counsel retained two psychological experts, Dr. Mandel Much and Dr. Carole Tavani. The prosecution hired its own expert, Dr. David Raskin. All were hired to evaluate the defendant's psychological status as it pertained to the commission of Ms. Krafchick's homicide. These evaluations were thoroughly reviewed by both sides along with the Court as noted in the Court's response to order of remand.[19] The defense concluded that the testimony anticipated by its experts might not carry the day on that issue and rather than risk a conviction, the Defendant opted to enter the plea to a lesser charge.

Again, given this context, the Court cannot conclude that this representation offered by defense counsel was inadequate or professionally deficient. The Defendant has failed to establish that but for counsel's advice the outcome would have been different. Lastly, there is no basis to conclude that

[19] Resp. to Order of Remand, at 5, J. Toliver (Feb. 2003).

the Defendants plea was not voluntarily or freely entered based upon the failure to use the above mentioned psychological evidence differently.

Defendant's third argument attacks the overall effectiveness of his counsel. It is at this point that he contends, relying on *Blakely v. Washington,*[20] that because he was sentenced outside of guidelines provided by SENTAC, his sentence was illegal. He places the blame for that transgression on his attorney and asks that his sentence be vacated as a result.

It is well-settled Delaware law that a sentence within the statutory limits prescribed by the General Assembly does not give rise to a legal or constitutional right of appeal.[21] Moreover, and as noted above, the fact that the Defendant was sentenced outside of SENTAC guidelines was specifically addressed by the Delaware Supreme Court in its order of remand to which this Court responded. The Supreme Court found no error when it affirmed the Defendant's conviction and sentence. Furthermore, unlike the Washington State guidelines at issue in *Blakely*, the sentencing standards established by

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[20] 124 S. [Cite]. 2531 (2004)

[21] *Mayes v. State*, 604 A.2d 839, 845 (Del. 1992); *Gaines v. State*, 571 A.2d 765, 766-67 (Del. 1990).

SENTAC are non-biding and voluntary.[22] Consequently, the decision in *Blakely* has no effect on the present case.[23]

To the extent that the Defendant claims that the Court's sentence was illegal or that defense counsel's representative contributed to the alleged miscarriage of justice, he is simply incorrect. Defense counsel asked that sentencing be postponed and a pre-sentence investigation be conducted. The Court declined to do so for reasons clearly stated on the record. Counsel argued for the minimum sentence allowed but was not able to persuade the Court to adopt his argument. There was nothing more that could have been done.

As the Court has concluded with regard to the Defendant's other arguments, the Defendant has not met the standard pronounced in *Strickland* relative to this argument. The Defendant has not shown how defense counsel's representation fell below an objective standard of reasonableness in anything other than vague and conclusory statements. He is not, as a consequence, able to overcome the strong presumption that counsel's actions were proper. Even if the Defendant could have proven that defense counsel's actions were lacking, he

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[22] *Benge v. State*, 826 A.2d 385, (Del. 2004); *Walls v. State*, 2005 WL 277916 (Del.).

[23] *See*, *Blakely*, 124 S. [Cite]. 2531.

has offered no credible evidence that the outcome of the trial would have been different if counsel had acted differently.

No matter how the Defendant's challenges to his conviction and sentence are viewed, whether separately or together, he is not entitled to the relief sought. His right to counsel was not abridged and his treatment during the course of the instant prosecution was not otherwise subject to sanction.

CONCLUSION

For the foregoing reasons, the Defendant's motion for post-conviction relief must be, and hereby is, **denied.**

IT IS SO ORDERED.

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Toliver, Judge