

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

June 28, 2005

N440
Donald L. Dailey

Sussex Correctional Institution
P. O. Box 500
Georgetown, DE 19947

RE: Defendant ID No. 0210012813

Dear Mr. Dailey:

On June 6, 2005, you filed a Motion for Postconviction Relief. I have had the opportunity to study it and this is my decision denying your Motion.

BACKGROUND

On August 7, 2003, you were sentenced to a period of incarceration of 35 years. After serving 14 years at Level V, the balance was suspended for probation. This sentence arose out of a no contest plea to three counts of rape in the 3rd degree.

You filed an appeal attacking the sentence. The sentence was affirmed by the Supreme Court of the State of Delaware. *Dailey v. State*, 2004 Del. LEXIS 110 (Del., 2004).

STATE'S ALLEGATIONS

The facts on which your plea was based are quite unusual. You were charged with the rape of your two boys by participating in, and having your, girlfriend have sexual intercourse with your teenage sons. She admitted to this and eventually was sentenced to incarceration for her participation.

Because of the impact on your boys and your prior conviction involving a sex crime against a minor child, the aforementioned sentence was imposed.

MORE PROCEDURAL BACKGROUND

On April 25, 2003, you appeared before the Court and entered a guilty plea based upon accomplice liability to four counts of rape in the 3rd degree. You had been placed under oath and a full colloquy took place with Judge Bradley. Under oath you acknowledged culpability as an accomplice.

After the entry of your plea, but prior to sentencing, you moved to withdraw your guilty plea, citing family pressures had forced you into entering the guilty plea. There were allegations of much family turmoil and there were recantations. Needless to say, the allegations and your guilty pleas had created much stress in your family.

On August 1, 2003, I granted your application to withdraw your guilty plea, but warned you that in granting your relief, you may have been jumping from the frying pan into the fire based upon the presentence investigation which had been completed by the Court. The State's case was based on admissions by your former girlfriend who was prepared to testify. Also whether reluctant witnesses or not, the State was prepared to have your boys testify.

You desired to go to trial and the case was set down for a final case review the following week, which was August 6, 2003. At that time, you entered a no contest plea to three charges of rape in the 3rd degree.

Because of the aforementioned history, a plea colloquy was conducted which was more extensive than a normal colloquy. In same you advised that you were satisfied with your attorney and had had enough time to consult with him. You also reported you had no complaints about how your attorney had done his job. You advised that you were not being forced to enter the plea by your attorney nor anyone else on earth. There was also a full discussion about your earlier desire to withdraw the original guilty plea and proceed to trial. You reported that it was your own personal decision that you no longer wanted to go to trial. You were made aware that by accepting your no contest plea, that was going to be the end of it. We had a full discussion concerning your trial rights. You were made aware that there was a sentencing recommendation, that the Court was not bound by that recommendation, and that you would not be able to change your mind if you receive a sentenced higher than the recommendation. You reported that you understood that.

Since it was a no contest plea, the State made a proffer as to the testimony of its witnesses, including your co-defendant and former girlfriend and the statements that your boys made to the interview at the Child Advocacy Center which was videotaped. Again, the allegation was not that you touched your boys but that you arranged for your girlfriend to have sexual intercourse with each of them while you watched and sometimes participated in sexual relations with your girlfriend. You acknowledged that you were

familiar with the State's case and had discussed it with your attorney. You acknowledged that if these witnesses were found to be credible by the jury, that there was a basis for you to be found guilty of these charges if you proceeded to trial.

I then asked you if there was any reason I should not accept the guilty plea, for you should speak now or forever hold your peace. You reported that there were no reasons I should not accept the guilty plea. You reported that this is what you wanted to do. I accepted the guilty plea and deferred sentencing to the next day.

On August 7, I noted the devastation that your conduct had created with your family and the prior record for a sex offense concerning a minor. The recommendation was seven years but I believed 14 years was more appropriate. The Supreme Court affirmed your sentence.

RULE 61 GROUNDS

In your Rule 61 application, you make the following allegations.

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| Ground 1 | Coerced confession/ testimony “negative influence on sons from their mother against their father. Mother promised to buy gifts for sons in return for their testimony against father. |
| Ground 2 | Effective (sic) assistance of counsel. Counsel have failed to acknowledge recanted transcripts from sons. Counsel had Donald Dailey, Sr.'s family members write letters to Mr. Dailey, Sr., in Court the day of final case review, which resulted in Mr. Dailey to be mentally persuaded into changing his decision on going to trial. |
| Ground 3 | Suppression of favorable evidence. “Letters from sons and family members were acknowledged as evidence. Witnesses were not questioned about recanted testimonies. Mother's background was not investigated to see if she has a pattern (of) falsely accusing father before. Co-defendant (Be-miller's) plea bargain for testimony against Donald Dailey, Sr.” |

You attached to your Motion much correspondence, most of it predating the entry of your plea, concerning the turmoil within your family, the accusations concerning the mother of your boys, and their recantations. These issues were known at the time you decided to enter your plea.

Therefore, I find that this information did not create an unjust result because you

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knew of it at the time you entered your plea in this Court. Instead of going to trial on six counts of rape, you chose to accept the plea to three counts of rape in the 3rd degree.

What you are basically asking me to do is once again allow you to withdraw your guilty plea based upon information known at the time the guilty plea was entered. I made you fully aware of the finality of the guilty plea and you acknowledged same. But you wish to use these allegations concerning your relationship between your boys' mother and you as well as their recantations to avoid the guilty plea. This is deja vu all over again. At some point in time, a case and an individual's actions on same must be considered final. I find that your allegations, in light of the history of the case, do not warrant the relief you seek and the Motion is denied.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary
Department of Justice