

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

STATE OF DELAWARE)	
)	
v.)	ID No. 0203007255
)	
RICHARD M. LAWS)	
)	
Defendant.)	

Submitted: May 17, 2005
Decided: August 24, 2005

On Defendant's Motion for Postconviction Relief. DENIED.

ORDER

Mark H. Conner, Deputy Attorney General, 820 N. French Street, Wilmington, Delaware.

Richard M. Laws, *pro se* Defendant, Howard R. Young Correctional Institution, P.O. Box 9561, Wilmington, Delaware.

CARPENTER, J.

Defendant filed his Motion for Postconviction Relief, pursuant to Superior Court Criminal Rule 61 (“Rule 61”), on December 15, 2004. After receiving Defendant’s Motion for Postconviction Relief, this Court ordered J. Brendan O’Neill (“Counsel”) to submit an affidavit responding to Defendant’s allegations. On January 21, 2005, Counsel filed an affidavit refuting those allegations and the State filed its response to Defendant’s Motion for Postconviction Relief on February 7, 2005. For the reasons set forth below, Defendant’s Motion for Postconviction Relief is **DENIED**.

I. Introduction

On January 14, 2003, a two day jury trial commenced in New Castle County, Delaware, in which the Defendant was found guilty of Possession of a Firearm During the Commission of a Felony, Possession of a Controlled Substance Within 1000 feet of a School, Possession of a Weapon with an Obliterated Serial Number, Possession of a Deadly Weapon by a Person Prohibited, Possession with Intent to Deliver Cocaine, Carrying a Concealed Deadly Weapon, and Resisting Arrest. On March 7, 2003, this Court sentenced Defendant to three years six months at Level 5, six months at Level 4, one year at Level 3 and one year, six months at Level 2.

Subsequently, Defendant appealed his conviction, contending “i) the trial court erroneously denied his motion for judgment of acquittal; and ii) that there was

insufficient evidence to sustain a conviction for Possession with Intent to Deliver Cocaine.”¹ After considering Defendant’s arguments, the Delaware Supreme Court concluded on December 18, 2003 that the trial judge did not err and the prosecution presented sufficient evidence from which a reasonable trier of fact could find Defendant guilty beyond a reasonable doubt of Possession with Intent to Deliver Cocaine. As a result the Delaware Supreme Court affirmed Defendant’s conviction. On February 2, 2004, this Court denied Defendant’s Motion for Modification of Sentence, noting that the majority of Defendant’s sentence is mandatory.

II. Discussion

Defendant raises two grounds for relief in his Motion for Postconviction Relief. First, he claims that his trial was tainted because the trial judge had a conflict of interest. This allegation stems from Defendant’s recollection of the trial judge’s admission that he had personal knowledge of the victim witness. In addition, Defendant alleges that Counsel was ineffective because he neglected to discuss this conflict with Defendant and then waived any potential legal issues by agreeing to proceed after the disclosure.

¹*Laws v. State*, 2003 WL 22998850, at *1 (Del. Supr.).

Before addressing the merits of any claims raised in a motion seeking postconviction relief, the Court must apply the procedural bars of Rule 61(I).² In order to maintain the integrity of the procedural rules, the Court should not consider the merits of postconviction claims where a procedural bar exists.³ Generally, “any ground for relief that was not asserted in the proceedings leading to the judgment of conviction . . . is thereafter barred.”⁴ However, that bar is inapplicable when Defendant can establish a “colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”⁵ These exceptions are narrowly tailored and applicable only in limited circumstances.⁶

Defendant’s claim that his trial was tainted by the trial judge’s personal knowledge of the victim witness is procedurally barred because he neglected to raise it on appeal.⁷ The exception found in Rule 61(I)(5) is inapplicable because Defendant has failed to demonstrate a “colorable claim that there was a miscarriage of justice.”⁸

²*See Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

³*State v. Trump*, 2004 WL 1874691, at *1 (Del. Super.).

⁴Super. Ct. Crim. R. 61(i)(4).

⁵*Id.* at 61(i)(5).

⁶*See Younger*, 580 A.2d at 555.

⁷Super. Ct. Crim. R. 61(i)(3).

⁸*Id.* at 61(i)(5).

Having failed to establish the requisite cause for relief, or prejudice, Defendant's claim is procedurally barred.⁹ However, the Court must also indicate it is totally puzzled by the allegation made by the Defendant. The only "victims" in this case are two Wilmington Police officers that the Court may have seen as witnesses in other cases but the Court has no contact or relationship outside of its judicial responsibilities. Amazed by the Defendant's "recollection" of the Court indicating at his sentencing on March 7, 2003 of some particular knowledge of the victim, the Court has again reviewed the sentencing transcript and can find no reference to such statements. Therefore, not only is the defendant's claim procedurally barred, he is simply wrong about the Court's contact with any of the victims in this case and perhaps is confusing this matter with other criminal proceedings.

In Defendant's second claim, he contends that Counsel was ineffective¹⁰ because he "did not consult" with Defendant regarding the trial judge's personal knowledge of the victim witness. In order to establish a claim for ineffective assistance of counsel, the defendant must satisfy the two-part test set forth in *Strickland v. Washington*.¹¹ The Defendant must prove, by a preponderance of the

⁹*Id.*; *Bailey*, 588 A.2d at 1127.

¹⁰*See Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986) (A claim for ineffective assistance of counsel is not subject to the procedural bar of Rule 61(I)(3), because such a claim may not be raised to the Delaware Supreme Court for the first time on appeal.).

¹¹466 U.S. 668 (1984).

evidence:¹² (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.¹³ Under the first prong, the Court will indulge a strong presumption that counsel’s representation was professionally reasonable.¹⁴ In addition, Delaware has held that a defendant must make “concrete allegations of actual prejudice” and substantiate them or risk summary dismissal in claims of ineffective assistance of counsel.¹⁵

Defendant has not established either of the prongs set forth in *Strickland*.¹⁶ First, the record does not support Defendant’s allegations that the trial judge had a conflict of interest or any reason to recuse himself.¹⁷ As a result, Defendant’s corollary claim, that Counsel was ineffective because he neglected to consult with Defendant regarding the alleged conflict, collapses. In addition, the only count in which there was a victim witness was the Resisting Arrest charge which was decided by the jury, and even if the Defendant’s allegation that the trial judge had some

¹²*State v. Wright*, 653 A.2d 288, 294 (Del. Super. Ct. 1994).

¹³*Albury v. State*, 551 A.2d 53, 58 (Del. 1988).

¹⁴*Id.* at 59.

¹⁵*See Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

¹⁶466 U.S. 668 (1984).

¹⁷According to *Los v. Los*, 595 A.2d 381, 384 (Del. 1991), familiarity with the victim witness does not require a *per se* or automatic recusal.

personal knowledge of the victim witness were true it obviously played no role in his conviction on this charge. The evidence was overwhelming that the Defendant fled from the police and resisted their efforts to take him into custody. Having failed to present a “colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction,¹⁸ Defendant’s second claim also fails.

III. Conclusion

Based upon the above reasoning, Defendant is not entitled to postconviction relief and the Motion is hereby **DENIED**.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.

¹⁸Super. Ct. Crim. R. 61(I)(5).