IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	CRIMINAL ACTION NUMBERS
v.	)	
	)	IN-03-04-1691
RENEE KRAFCHICK	)	
	)	
Defendant	)	ID NO. 0301001064

Submitted: May 25, 004
Decided: July 8, 2004

MEMORANDUM OPINION

Upon Motion of Defendant for Post-conviction Relief - ***DENIED***

HERLIHY, Judge

Renee A. Krafchick pled guilty to Robbery 1st degree on June 25, 2003 and on the same day was sentenced to 4 years at level 5 suspended after 2 years, with 2 years probation to follow. Krafchick filed a motion for reduction of sentence on July 29, 2003, which this Court denied on August 26, 2003.

On February 10, 2004, Krafchick, acting *pro se,* filed a motion for post-conviction relief seeking to withdraw her guilty plea. She also requested an evidentiary hearing pursuant to Superior Court Criminal Rule 61(h). The Court sees no basis to grant the hearing request or her motion for post-conviction relief.

Krafchick's Motion

Krafchick asserts three grounds for relief:

1. Her counsel did not investigate mitigating evidence that would have resulted in a less severe sentence;

2. Counsel denied her the opportunity to understand the seriousness of the plea and she did not understand the rights she was waiving; and

3. Due to the circumstances and death of her parents, her emotional state was such her counsel failed to appreciate it.

As to her first claim, she says in a two month period in early 2003, that she and her lawyer met only twice. She contends counsel did not investigate her case, and in the end, she felt compelled to accept the plea. Her support for the second ground for relief is based on counsel's alleged failure to develop mitigating evidence to be used in connection with

her sentencing. Except for his failure, she asserts, her sentence would have been different. She refers to some prior mental health history, undocumented, to explain why she participated in the offense.

Krafchick appears to have folded the second and third claims into one, and the Court will consider them in that fashion.

The Court forwarded Krafchick's initial motion to the attorney against whom she now makes her complaints.[1] He responded by a sworn statement. Based on that response, the Court sees no need for an evidentiary hearing.[2] Counsel's reply first states that Krafchick did not respond to his letter asking for witness names and asking she appear for an appointment. He did meet up with her at first case review, however. At that time she informed him she had made a full confession to participating as a sexual lure in what became a vicious robbery. As of first case review counsel had not reviewed the State's discovery response. Her boyfriend had told her, however, that the robbery victim was unlikely to testify.

Krafchick, according to counsel, said she was undergoing mental health treatment.

Subsequently, there was a final case review. By then the State had responded to discovery supplying a copy of her confession and making it known that the co-defendant

---

[1] Superior Court Criminal Rule 61(d).

[2] *Maxion v. State*, 686 A.2d 148, 151 (Del. 1996).

was going to testify against her. The prosecutor was unwilling to consider anything less than a plea to robbery first degree. The prosecutor also told counsel the victim was cooperative.

That final case review was on April 7, 2003. Since Krafchick did not plead that day, the case was set for trial which was to be July 3rd. But she was reindicted. The new indictment added charges of assault second degree and possession of a deadly weapon during the commission of a felony, the newly indicted assault charge, to the original charges of robbery first degree, another weapons charge and conspiracy second degree.

She was re-arraigned and had another final case review on May 27, 2003. She did not plea then and the case was still marked for trial. Counsel reports that he wrote Krafchick that her decision to go to trial had sentencing consequences. Though his response to the Court on this point does not expressly state it, his statement infers that he told her, if convicted on all the charges, she would face a minimum sentence of six years.

At her May 27th case review, she was given a "plea window" of up until June 30th. The purpose of this "window," counsel reports, was to make arrangements for her then unborn child. She pled to robbery first degree on June 25th and was immediately sentenced.

Upon receipt of counsel's response, the Court forwarded it to Krafchick to give an opportunity to reply. She asked for and received more time in which to reply. When it was received, however, it raised no new points or added any information.

Discussion

Krafchick seeks to withdraw her plea based on a claim of ineffective assistance of counsel. Such a claim made after sentencing is governed by Superior Court Criminal Rule 61.[3] Rule 61 provides for an evidentiary hearing[4] and Krafchick has requested one. This Court has the discretion to conduct or not conduct one.[5]

Based on the vagueness of Krafchick's claims and counsel's detailed sworn reply, the Court sees no reason for a hearing.

To establish a claim of ineffective assistance of counsel, Krafchick must establish that (1) her attorney's conduct fell below an objective standard or reasonableness and (2) but for counsel's errors, she would not have pled guilty.[6] She cannot meet either of these two requirements.

She claims counsel somehow deprived her of the opportunity to understand the seriousness of the plea or the rights she was waiving. The first part of this claim is somewhat vague. Ordinarily the Court does not consider such vague claims.[7] Counsel reports he told her of the consequences of turning down the robbery plea, but he has not

---

[3] Superior Court Criminal Rule 32(d).

[4] Superior Court Criminal Rule 61(h).

[5] Superior Court Criminal Rule 61(h)(1); *Maxion*, 686 A.2d at 151.

[6] *Albury v. State,* 551 A.2d 53 (Del. 1988).

[7] *Weatherspoon v. State*, Del. Supr., No. 591, 2002, Walsh, J. (Feb. 28, 2003) (ORDER).

told the Court exactly what these consequences were. Later, she signed a TIS Guilty Plea form for her robbery plea indicating she knew that she faced a sentence of two to twenty years with a two year minimum. The plea agreement said the State was recommending the two year minimum. The Court during the plea colloquy informed her she faced a two year minimum.

Krafchick had confessed. The victim was going to cooperate and her co-defendants were going to testify against her. Under all these circumstances Krafchick knew the seriousness of her situation. She does not explain what about all this she did not understand.

Krafchick contends she did not understand the rights she was waiving . First, this is a generalized and conclusory claim. She does not specify what rights. Second, in her own initial motion, she acknowledges she is bound by the TIS guilty plea form.[8] The form recites the trial and appeal rights she waived by pleading guilty. In the plea colloquy, the Court made sure she was aware of the trial and appeal rights she was waiving. And she is correct, she is bound by her statements during the colloquy and by her signature on the TIS guilty plea form.[9] She has offered no explanation why she is not. Finally, she points to no act of counsel in regard to this claim.

---

[8] She cites *Fullman v. State*, Del. Supr., No. 268, 1988, Christie, C.J. (Feb. 22, 1989) (ORDER).

[9] *Somerville v. State*, 703 A.2d 629 (Del. 1997).

Nor does Krafchick explain how any action of counsel led to her pleading guilty to robbery rather than going to trial on all the other charges. In short, she has shown neither counsel deficiency nor prejudice.[10]

As part of her second ground for relief she mentions that the State's recommendation for her sentence on the robbery first degree charge was for two years in jail. She acknowledges, again in her *pro se* motion, that she was aware this recommendation was not binding on the Court.[11] Yet in the "same breath" - the very next sentence - she complains that she received a jail sentence of five years suspended after two years. Her complaint is that her lawyer should have done something about the Court's sentence being harsher than the recommendation.

Krafchick's complaint makes no sense. First, the two years jail time she received is the minimum for robbery in the first degree. She knew that from the TIS Guilty Plea form and the plea colloquy. Second, that two year minimum is included in the State's recommendation on the plea agreement. Third, the three years of probation about which she complains is also in the recommendation. Fourth, contrary to her complaint, the Court imposed a four year sentence not a five year one as the State recommended. She received a less severe sentence then that about which she complains. The last two years, not the last three years, were suspended for a period of probation.

---

[10] *Albury*, 551 A.2d 53.

[11] Krafchick motion for post-conviction relief, 2/10/04, p. 8.

All of this demonstrates this complaint about counsel's ineffectiveness lacks merit.

Conclusion

For the reasons stated herein, the motion for post-conviction relief of Renee Krafchick is DENIED.

IT IS SO ORDERED.

_____

J.