IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 0206019341
	)	
CURTIS COLLINS	)	
	)	
Defendant.	)	

Submitted: February 2, 2006
Decided: April 28, 2006

Upon Defendant's Motion for Postconviction Relief. DENIED.

ORDER

R. David Favata, Deputy Attorney General; Wilmington, Delaware.

Curtis M. Collins, *pro se* Defendant; Sussex Correctional Institution; Georgetown, Delaware.

CARPENTER, J.

On this 28th day of April, 2006, upon consideration of Curtis M. Collins's ("Defendant") *pro se* motion for postconviction relief, it appears to the Court that:

1. Defendant filed his motion, pursuant to Superior Court Criminal Rule 61, on November 15, 2005. For the reasons set forth below, Defendant's motion for postconviction relief is denied.

2. Commencing July 8, 2003, a two-day jury trial was held in which the Defendant was found guilty of two counts of First Degree Robbery, two counts of Possession of a Deadly Weapon During the Commission of a Felony, Possession of a Deadly Weapon by Person Prohibited, Assault Second Degree and Terroristic Threatening. Mr. Collins was sentenced as a habitual offender on September 26, 2003 to a minimum of 28 years of incarceration, to be followed by periods of decreasing supervised probation. Upon appeal, Mr. Collins's convictions were affirmed by the Delaware Supreme Court and the mandate was issued on March 16, 2004. On November 15, 2005, the Defendant filed this motion, in which he seeks postconviction relief on two grounds: prosecutorial or judicial misconduct and ineffective assistance of counsel. Joseph M. Bernstein, Esquire, trial counsel for Mr. Collins, has filed an affidavit in response to the alleged charge of ineffective assistance of counsel, and the State has filed its response to the remainder of Mr. Collins's motion.

3. First, Mr. Collins asserts his trial counsel was ineffective. For any ineffective assistance of counsel claim, there is a strong presumption that the representation the defendant received at trial was professionally reasonable.[1] To overcome this presumption, a defendant must show 1) the representation he received at trial was deficient and 2) this deficiency resulted in prejudice to the defendant, causing the defendant to be deprived of a fair trial.[2] In making this assertion, claims by a defendant cannot be vague or conclusory; they must be concrete to be successful.[3]

4. Here, Mr. Collins alleges his trial counsel was ineffective for failure to file a motion to suppress the knife allegedly used in the robbery, which the Defendant states ". . . was not in defendant's possession and had never been in defendant's possession." Mr. Bernstein's affidavit reflects that he did not file a motion to suppress the knife because the Defendant did not have standing to contest the search since it was not taken directly from Mr. Collins, nor from any place Mr. Collins had

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[1] *Evans v. State*, 795 A.2d 667 (Del. 2002).

[2] *Strickland v. Washington*, 466 U.S. 668, 694 (1984).

[3] *State v. St. Louis*, 2004 WL 2153645 (Del. Super. Ct.) (citing *Younger v. State*, 580 A.2d 552 (Del. 1990)).

an expectation of privacy.[4] This is supported by the trial transcript which indicates that Corporal Curley found the knife on the sidewalk in the front yard,[5] and that pictures were entered into evidence showing the same.[6] Based on the above, it appears that, had a motion to suppress the knife been filed, it would have been denied. Thus, Mr. Bernstein's decision to not file a motion to suppress was based upon a reasonable analysis of evidentiary law. The Defendant has failed to meet his burden under the Strickland test, and as such, this ground for relief is unsuccessful.

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[4]*State v. Powell*, 2003 WL 194929 (Del. Super. Ct.), at *2. (In review of the trial transcript and the officer's testimony, it was clear that a motion to suppress evidence would have likely been denied, and as such, counsel's decision to not file a motion to suppress met the reasonable professional standard.); *State v. McCurley*, 2004 WL 2827857 (Del. Super. Ct.) (Defendant's claim of ineffective assistance failed to show counsel did not base his decision to not file a motion to suppress on a reasonable analysis of evidentiary law, nor did it reflect the outcome of the trial would have been different had the motion been filed, thus his claim failed.).

[5]Upon direct examination of Corporal Curley, the lead investigator, the Corporal testified as follows:

Q. Did you locate – was a knife located at the scene?
A. Yes, there was.
Q. Where was it?
A. It was right on the sidewalk area, in the front yard. . .

Trial Tr. vol. 1, 78, July 8, 2003.

[6]Upon direct examination of Corporal Jackson of the Evidence Detection Unit of the Criminal Investigation Division, while Corporal Jackson was reviewing a series of pictures:

A. 11 depicts blood on the sidewalk in the 2600 – I'm sorry – 2700 block of Jesup Street. And it also shows the knife blade laying on the ground, as well.
Q. And is that knife blade in the picture in the exact location where you observed it when you arrived?
A. Yes, sir, it is.

Trial Tr. vol. 1, 139-140, July 8, 2003.

5. Second, Mr. Collins asserts his trial counsel was ineffective because he did not visit the crime scene. However, Mr. Collins's conclusory statements fail to reflect why a personal visit to the area would be beneficial to his representation, nor has he shown how he was unfairly prejudiced by counsel's decision or how it would have any effect on the outcome of the trial. Mr. Bernstein asserts in his affidavit that there was no issue that could be resolved by a visit to the scene, and a review of the trial transcript supports this decision was reasonably made. As such, this argument also fails.

6. Lastly, Mr. Collins asserts prosecutorial and judicial misconduct in allowing his trial to go forward on the day scheduled, stating that Mr. Collins believed he would be offered an additional plea, but instead stood trial. The final case review in this case occurred on December 2, 2002, however additional time was requested to resolve the case. As such, an order was entered establishing a deadline of December 18, 2002 for the defendant to enter a plea. The deadline passed without the acceptance of a plea by the Defendant. On January 3, 2003, an order was entered scheduling trial for March 13, 2003. A jury trial was held on that date, and a mistrial was declared due to the Defendant's outburst before the jury. On May 2, 2003, this Court again entered a trial scheduling order, this time scheduling the trial for July 8, 2003. On July 7, 2003, Mr. Bernstein appeared before the Court at a case review

calendar and advised that he had failed to convince Mr. Collins that accepting a plea offer would be in his best interest, and Mr. Bernstein attempted to have the Court again address Mr. Collins to explain the possible consequences of that decision.[7] The record reflects the Court had previously advised Mr. Collins of his options with respect to a plea, and chose to not address Mr. Collins again on July 7, 2003 due to his past behavior.[8] On July 8, 2003, Mr. Bernstein advised the Court of the State's decision to revoke its previous plea offer in the case and that the trial would be held.[9] As such, the two-day trial commenced which ended in the Defendant's conviction. On September 26, 2003 he was sentenced as a habitual offender.

7. While review of the record reflects plea discussions the day before the scheduled trial, it also reflects that Mr. Collins chose to reject those offers in spite of the advice given to him by counsel. Having rejected the plea, the Defendant has no basis to object when the State has indicated it had enough of Mr. Collins's gamesmanship and decided to exercise its right to go to trial. Mr. Collins had previously been offered, and according to the record adamantly rejected, plea offers

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[7]Case Review Tr. July 7, 2003.

[8]*Id.*

[9]Trial Tr. vol. 1, 4-5, July 8, 2003.

by the State.[10] It appears Mr. Bernstein would have no reason to believe Mr. Collins had changed his mind and would enter into a plea bargain on July 8, 2003, and Mr. Collins offers nothing to the contrary. Mr. Collins had a number of opportunities to enter into a plea bargain, and he refused them all. He cannot now complain that his decisions were wrong. Mr. Collins may have exercised poor judgment in rejecting the plea offers, but he only has himself to blame for his predicament.

8. Since the docket reflects adequate notice that a trial would be held on July 8, 2003, and since Mr. Collins fails to provide this Court with any indication his trial was conducted unfairly or in a manner that was prejudicial to him, the Court cannot grant postconviction relief on this ground. The State has no obligation to offer a plea, and the Defendant has no constitutional or statutory right to have one provided.[11]

9. Based on the foregoing, the Defendant is not entitled to postconviction relief and the Motion is hereby **DENIED**.

IT IS SO ORDERED.

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Judge William C. Carpenter, Jr.

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[10] *Id.* at 5-8.

[11] *Collins v. State*, 852 A.2d 907 (Del. 2004) (The trial court may exercise discretion to allow the case to proceed to trial upon the withdraw of the a plea offer.) (citing *Shields v. State*, 374 A.2d 816 (Del. 1977)); see also, *State v. Bonds*, 1998 WL 733054 (Del. Super. Ct.), at *2. (It is not a constitutional violation for the State to withdraw a plea offer at any time prior to the entry of a plea.).