

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

STATE OF DELAWARE,)
) CR. A. NOS: IN04-03-1737 R1;
 v.) IN04-03-2717 R1; IN04-03-2718 R1
)
 JASON MILLS,) DEF. I.D.: 0403010565
)
 Defendant.)

Date Submitted: May 13, 2006
Date Decided: August 7, 2006

*Upon Consideration of
Defendant's Pro Se Motion for Postconviction Relief*
DENIED.

ORDER

This 7th day of August, 2006, upon consideration of the Motion for Postconviction Relief brought by Defendant, Jason Mills, it appears to the Court that:

1. Jason Mills ("Mills") was charged and convicted by a jury on June 29, 2005 of criminal impersonation and possession of a firearm and ammunition by a person prohibited. He was sentenced to five years of mandatory incarceration followed by probation. He appealed his conviction to the Delaware Supreme Court.

The conviction and sentence were affirmed on April 17, 2006.¹

2. On May 10, 2006, Mills filed this *pro se* motion for postconviction relief. He raises two grounds for relief – ineffective assistance of counsel and due process violations. He contends that his counsel was ineffective for improperly refusing and failing to have illegally seized evidence suppressed, as well as for filing a motion to withdraw representation. Mills argues that his due process rights were violated because his arrest was unlawful in that a citation for speeding was not issued to the driver of the vehicle in which he was a passenger (even though speeding was the reason for the initial stop), and that the store owner who sold the gun to the driver called police to have the driver and himself arrested.

3. Before addressing the merits of any postconviction relief motion, the Court first must determine whether the claims pass through the procedural filters of Superior Court Criminal Rule 61 (“Rule 61”).² To protect the integrity of the procedural rules, the Court will not address the substantive aspects of the claims if Defendant’s claims are procedurally barred.³ Rule 61(i) imposes four procedural

¹ *Mills v. State*, 2006 WL 1027202 (Del. Apr. 17, 2006).

² *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) (“It is well-settled that the Superior Court and this Court must address the procedural requirements of Rule 61 before considering the merits of this motion.”).

³ *Id.*

imperatives: 1) the motion must be filed within three years of a final order of conviction; 2) any basis for relief must have been asserted previously in any prior postconviction proceeding; 3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules; and 4) any basis for relief must not have been formerly adjudicated in any proceeding. Under Rule 61(i)(5), a defendant may avoid the first three of these procedural imperatives if the claim is jurisdictional or is a “colorable claim that there was a miscarriage of justice because of a constitutional violation[.]”

4. In applying the procedural filters to this case, it appears that Mills’ motion was timely filed, there have been no prior postconviction proceedings, and the bases for relief Mills asserts have not been formerly adjudicated, including the ineffective assistance of counsel claim which may not be asserted at trial or on direct appeal.⁴ With respect to Mills’ alleged “due process” violations, while it appears that such claims were not raised at trial or on direct appeal, the court is satisfied that Mills has alleged a “colorable claim” of constitutional violations. Accordingly, the substantive

⁴ See *Wing v. State*, 690 A.2d 921, 923 (Del. 1996) (“This Court ... will not hear a claim of ineffective assistance of counsel raised for the first time on direct appeal.”); *Harris v. State*, 293 A.2d 291, 293 (Del. 1972) (citing *O’Connor v. Warden, Md. Penitentiary*, 253 A.2d 434, 594 (Md. App. 1969) (“[T]he allegation that trial counsel was incompetent need not be raised either at trial or on direct appeal in order to be available as a ground for relief ... under [a postconviction motion].”)); *Supr. Ct. R. 8*.

merits of his motion will be addressed.

A. Ineffective Assistance of Counsel

5. In *Strickland v. Washington*,⁵ the U.S. Supreme Court established the guiding principles for assessing the validity of an ineffective assistance of counsel claim. To prevail, a movant must establish two factors: (1) “counsel’s performance was deficient ... [in that] counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment;” and (2) “the deficient performance prejudiced the defense ... [because] counsel’s errors were so serious as to deprive the defendant of a fair trial[.]”⁶ There is a “strong presumption that the representation was professionally reasonable” and, therefore, the first prong of this test requires a movant to meet a high threshold to establish a violation of the “objective standard of reasonableness.”⁷ The second prong requires that the movant “affirmatively prove prejudice” by establishing to “a reasonable degree of probability that but for counsel’s errors, the outcome of the proceedings

⁵ 466 U.S. 668 (1984).

⁶ *Id.* at 687.

⁷ *Fletcher v. State*, 2006 WL 1237088, at *2 (Del. Super. Ct. May 9, 2006) (quoting *State v. Flonnory*, 2003 WL 22455188, at *1 (Del. Super. Ct. Oct. 29, 2003)).

would have been different.”⁸

6. Mills contends his counsel was ineffective for two reasons: 1) counsel failed and/or refused to file a motion to suppress evidence he claims was obtained in violation of his constitutional rights; and 2) counsel filed a motion to withdraw.

7. Just prior to his arrest, Mills was a front-seat passenger in a vehicle operated by Kathleen Kienle. Officer Burke, of the New Castle County Police, stopped the vehicle for speeding. Officer Burke approached the vehicle and requested identification from both Ms. Kienle and Mills. Mills identified himself as Clinton King and produced a Delaware State Identification Card in that name. Officer Burke noticed several handgun brochures on the floorboard near Mills’ feet that he was attempting to kick under his seat. Mills was subsequently asked to step out of the vehicle after Ms. Kienle was taken into custody for an outstanding warrant. When questioned, Mills denied any knowledge of the handgun brochures.

8. After being taken into custody, Ms. Kienle told Officer Burke that her bracelet had come loose and asked him to put it in her purse, which was still in the vehicle. Officer Burke did so and found packages of crack cocaine in her purse. Ms. Kienle told Officer Burke, and testified at trial, that the cocaine belonged to Mills.

⁸ *Fletcher*, 2006 WL 1237088, at *2; *State v. Guinn*, 2006 WL 1454811, at *1 (Del. Super. Ct. May 25, 2006).

A search of the car trunk revealed a handgun and ammunition. Ms. Kienle also told Officer Burke, and testified at trial, that she bought the handgun and ammunition for Mills.

9. Counsel’s failure and/or refusal to file a motion to suppress the evidence obtained by Officer Burke (namely the drugs, gun, and ammunition) did not fall below an objective standard of reasonableness as Mills did not have standing to assert a Fourth Amendment violation with respect to the search of the vehicle. To have standing, a claimant must assert a violation of his own constitutional rights, not the rights of a third party.⁹ A defendant’s Fourth Amendment rights are only violated when the “challenged conduct invaded his legitimate expectation of privacy.”¹⁰ An expectation of privacy exists when the defendant has a possessory or proprietary claim in the searched location.¹¹ A passenger who does not own or exercise control over a vehicle does not possess a reasonable expectation of privacy in the vehicle in

⁹ *United States v. Payner*, 447 U.S. 727, 731 (1980) (citing *Rakas v. Illinois*, 439 U.S. 128, 133-140 (1978)).

¹⁰ *See id.* (Holding that even if evidence is seized unlawfully from a third party, “[o]ur Fourth Amendment decisions have established beyond any doubt that the interest in deterring illegal searches does not justify the exclusion of tainted evidence at the instance of a party who was not the victim of challenged practices.”).

¹¹ *Combs v. United States*, 408 U.S. 224, 226 (1972). *See also State v. Bien-Aime*, 1993 WL 138719, at *7 (citation omitted) (A “search and seizure may not be challenged unless the moving party has asserted ‘either a property or possessory interest in the areas searched [or] the property seized and if he can show a legitimate expectation of privacy in areas searched.’”).

which he is traveling and, therefore, does not have standing to challenge a search.¹² Mills, who was merely a passenger in Ms. Kienle's vehicle, does not possess standing to assert a challenge against the search of her vehicle. Ms. Kienle directed Officer Burke to place her loose bracelet in her purse located in the vehicle resulting in the discovery of crack cocaine. Ms. Kienle's vehicle and purse were not owned by Mills, nor did he exercise control over them. Mills, therefore, has no standing to object to the search conducted by police. Defense counsel's decision not to file a motion to suppress was reasonable and within the acceptable standards of professional performance set by *Strickland*.¹³

10. Counsel's filing of a motion to withdraw on August 3, 2004, also does not support Mills' ineffective assistance of counsel claim. Counsel's motion was denied on August 24, 2004. Mills' jury trial commenced on June 23, 2005. Mills states no basis for prejudice resulting from his counsel seeking to withdraw. Mills and his counsel continued to prepare for trial in the ten intervening months between the denial of the motion and trial. Counsel's decision to file a motion to withdraw had no bearing on the outcome of the trial. That is, the result of the trial would not have differed had counsel decided not to file a motion to withdraw.

¹² *Jarvis v. State*, 600 A.2d 38, 41 n. 1 (Del. 1991).

¹³ *See* 466 U.S. at 687. The Court notes that a motion to suppress the fruits of the search likely would not have been successful in any event.

11. Based on the foregoing, Mills' ineffective assistance of counsel claim must fail because he has not met his burden of establishing that his counsel's representation fell below an objective standard of reasonableness or that he was prejudiced by any of counsel's actions or alleged errors.

B. Due Process Violations

12. Mills contends his constitutional rights were violated because the driver of the vehicle, Ms. Kienle, was not issued a citation for speeding, even though the vehicle was originally stopped for speeding. He further argues that his constitutional rights were violated when the store owner who sold the gun to Ms. Kienle allegedly called the police to have her and the defendant arrested. Mills couches these claims as "due process" violations. The Court, however, fails to see how these facts could support a claim that Mills' substantive or procedural due process rights under the Fifth and Fourteenth Amendments have been violated. Nevertheless, the Court will attempt to decipher the merits of these two claims in order to ensure that none of Mills' constitutional rights have been implicated.¹⁴

13. Mills' allegation that his constitutional rights were violated because Ms. Kienle was not issued a speeding citation after being stopped for speeding is

¹⁴See *State v. Hamilton*, 1998 WL 733188, at *1 n. 1 (Del. Super. Ct. July 17, 1998) (The Court may exhibit leniency toward a *pro se* litigant to ensure his case is fully and fairly heard.).

unconvincing. The Court cannot conceive of a scenario where the failure of police to issue a traffic citation to a driver would give rise to a constitutional claim by the passenger of that vehicle. Here, Officer Burke witnessed Ms. Kienle commit a traffic violation (speeding). This was sufficient to stop Ms. Kienle's vehicle as "a traffic violation such as speeding ... constitutes probable cause for a stop."¹⁵ As previously explained, Mills has no standing to object to the stop of the vehicle or its subsequent search. As a passenger, Mills only possesses standing to challenge the circumstances surrounding his own detention after the vehicle was stopped.¹⁶ Therefore, Officer Burke's alleged failure to give Ms. Kienle a citation for speeding did not violate any of Mills' constitutional rights.

14. Mills next argues that his constitutional rights were violated when the store owner sold the gun to Ms. Kienle and then allegedly called the police to have her and the defendant arrested. The Court does not agree. Again, Officer Burke had probable cause to stop Ms. Kienle's vehicle because she was speeding. There is nothing to suggest that Officer Burke's action in stopping the vehicle was the result of information he received from the store owner. However, even if Officer Burke's action in stopping Ms. Kienle's car for speeding was merely a pretext to further

¹⁵*State v. Drummond*, 2000 WL 703250 at *2 (Del. Super. Ct. Apr. 25, 2000) (citing *Eskridge v. Voshell*, 1991 WL 78471, at *3 (Del. Super. Ct. Apr. 17, 1991)).

¹⁶*Jarvis*, 600 A.2d at 41 n.1.

investigate based on information he received from the store owner, Mills still would not have a valid constitutional claim.¹⁷ The search of the vehicle was valid because it was based on probable cause after the discovery of the drugs in Ms. Kienle's purse and because it was a search incident to a lawful arrest (Ms. Kienle's arrest for an outstanding warrant). Further, as stated, Mills has no standing to object to the stop and subsequent search of the vehicle. In short, the Court finds that the store owner's actions could not possibly have violated Mills' constitutional rights.

15. Based on the foregoing, Mills' Motion for Postconviction Relief is **DENIED.**

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to Prothonotary

¹⁷ See *Whren v. U.S.*, 517 U.S. 806, 810 (1996) (holding that pretextual stops by police do not violate the Fourth Amendment); *Traylor v. State*, 458 A.2d 1170, 1174 (Del. 1983) (Defendant argued that his arrest for a traffic violation was a pretext to justify a search of his car. Regardless of the officer's reasons for arresting defendant, it remained within the officer's discretion to make the custodial arrest following the witnessed violation and therefore, the search was valid.).