SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

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

September 5, 2006

Jesus Watson
Sussex Correctional Institution
23207 DuPont Highway
Georgetown, DE 19947

RE: State of Delaware v. Jesus Watson, Def. ID# 91S00227DI

DATE SUBMITTED: June 11, 2006

Dear Mr. Watson:

Pending before the Court is the third motion for postconviction relief which defendant Jesus Watson ("defendant") has filed pursuant to Superior Court Criminal Rule 61 ("Rule 61") since entering into guilty pleas on August 20, 1991, to one count of unlawful sexual intercourse in the first degree and two counts of robbery in the first degree. This is my decision denying the motion.

This Judge took the above-referenced guilty pleas. On October 4, 1991, the Honorable William Swain Lee sentenced defendant. The sentence on the unlawful sexual intercourse count was 20 years at Level 5, with credit for time served. The sentences for each of the robbery counts were identical: 10 years at Level 5, suspended for probation after serving 5 years at Level 5. Defendant did not file an appeal therefrom.

Defendant filed his first motion for postconviction relief on March 17, 1992, alleging

ineffective assistance of counsel and a coerced guilty plea. Therein, he did not allege that he was told he could be paroled if he entered the pleas and that was the reason why he entered them. The Court denied the first Rule 61 motion, concluding that trial counsel was effective and that defendant voluntarily entered the guilty pleas. State v. Watson, Del. Super., Cr. A. Nos. S91-01-0670, et al., Lee, J. (May 18, 1992). In 1999, defendant sought a pardon, which obviously was denied. On September 6, 2002, defendant filed his second motion for postconviction relief alleging that there was no Truth-in-Sentencing Guilty Plea form in the file. Defendant did not allege that he was told he could be paroled if he entered the plea agreement and that was why he entered it. The second Rule 61 motion was denied as procedurally barred and meritless. State v. Watson, Del. Super., Def. ID# 91S00227DI, Stokes, J. (Dec. 30, 2002).

On June 8, 2006, defendant filed his third postconviction relief motion. In that motion, he makes two assertions, both of which are connected to his contention that he thought he would be eligible for parole in this case. It is apparent from defendant's arguments that the parole he is referencing is the discretionary parole set forth in 11 Del. C. § 4346[1] which allows for early release from incarceration. As will be explained below, defendant's sentence is not subject to this discretionary parole but is subject to parole in the form of conditional release as set forth in 11 Del.

---

[1]In 11 Del.C. § 4346(a), it is provided in pertinent part:

> (a) A person confined to any correctional facility administered by the Department may be released on parole by the Board if the person has served 1/3 of the term imposed by the court, such term to be reduced by such merit and good behavior credits as have been earned, or 120 days, whichever is greater. ***

C. § 4348.[2]

Defendant alleges that his trial counsel was ineffective because she told him that he would be eligible for parole on this sentence. He asserts that if he had been informed he was not eligible for parole, he would not have taken the plea, would have gone to trial, and would have risked a longer sentence, perhaps life imprisonment.[3] He submits an affidavit in support of those assertions. Defendant also alleges that his plea was not entered knowingly, intelligently, and voluntarily. In support thereof, he cites to the Court's statements made during the plea colloquy that the nineteen year statutorily-minimum sentence on the three counts was parolable. Thus, he maintains he has shown, as Rule 61(i)(5) requires, "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."

The first step this Court takes is to determine if the claims defendant advances in this Rule 61 motion may proceed or if they are procedurally barred. In the version of Rule 61(i) which applies to defendant's case, it is provided as follows:

> *(i) Bars to relief.* (1) Time limitation. A motion for postconviction relief may not be filed more than three years after the judgment of conviction is final or, if it

---

[2]In 11 Del. C. § 4348, it is provided in pertinent part:

> A person having served that person's term or terms in incarceration, less such merit and good behavior credits as have been earned, shall, upon release, be deemed as released on parole until the expiration of the maximum term or terms for which the person is sentenced. ***

[3]This assertion renders defendant's ineffective assistance of counsel claim meritless because it establishes defendant cannot show prejudice; i.e., that he would have received a lesser sentence had he not pleaded guilty and proceeded to trial. Dorsey v. State, Del. Supr., No. 406, 2005, Jacobs, J. (April 4, 2006).

> asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than three years after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.
>
> (2) Repetitive motion. Any ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim in warranted in the interest of justice.
>
> (3) Procedural default. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows
>
> (A) Cause for relief from the procedural default and
>
> (B) Prejudice from violation of the movant's rights.
>
> (4) Former adjudication. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.
>
> (5) Bars inapplicable. The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to 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.

Defendant's motion is not timely filed, and thus, Superior Court Criminal Rule 61(i)(1) bars it. Defendant's claim that trial counsel was ineffective is barred pursuant to Superior Court Criminal Rule 61(i)(2) because defendant failed to raise it in his first postconviction relief motion. Defendant's claim that his plea was not knowingly, intelligently, and voluntarily entered because he thought his sentence was subject to parole is barred pursuant to Superior Court Criminal Rule 61(i)(3) because defendant did not assert the claim during the proceedings leading to the judgment of conviction.

Defendant seeks to overcome these bars by asserting the miscarriage of justice exception as contained in Rule 61(i)(5).

Resolving the issues at hand requires a review of the taking of the guilty plea.

When defendant entered his plea, Truth in Sentencing ("TIS") recently had been enacted; it applied to crimes committed after June 29, 1990. 67 Del. Laws, c. 130 (1989). Because the crimes occurred on January 12, 1991, TIS applied to defendant's case. The sentence range for a count of unlawful sexual intercourse in the first degree after TIS was 15 years to life at Level 5.[4] 11 Del.C. § 4205(b)(1).[5] The sentencing range for each count of robbery in the first degree was 2 to 20 years at Level 5. 11 Del. C. § 4205(b)(2).[6] Any period of incarceration imposed other than the life term was subject to a diminution of confinement. 11 Del. C. § 4381(a).[7] None of the sentences were subject to discretionary parole as set forth in 11 Del. C. § 4346 because TIS eliminated discretionary parole.

---

[4]The sentence for unlawful sexual intercourse in the first degree committed before June 30, 1990, was "imprisonment for not less than 20 years without benefit of probation or parole or any other reduction." 11 Del. C. § 4209A (repealed by 67 Del. Laws, c. 130, § 6, effective July 17, 1989).

[5]In 11 Del.C. § 4205(b)(1), it is provided in pertinent part:

> (b) The term of incarceration which the court may impose for a felony is fixed as follows:
>
> (1) For a class A felony not less than 15 years up to life imprisonment to be served at Level V....

[6]In 11 Del.C. § 4205(b)(2), it is provided in pertinent part:

> (b) The term of incarceration which the court may impose for a felony is fixed as follows:
>
> ***
>
> (2) For a class B felony not less than 2 years up to 20 years to be served at Level V.

[7]In 11 Del. C. § 4381, it is provided: "All sentences imposed for any offenses other than a life sentence imposed for class A felonies may be reduced by earned good time under the provisions of this section and rules and regulations adopted by the Commissioner of Corrections."

11 Del. C. § 4205(j);[8] 11 Del. C. § 4354;[9] Jackson v. State, 700 A.2d 1203, 1206 n.6 (Del. 1997), overruled on other grounds, Crosby v. State, 824 A.2d 894 (Del. 2003), explained by Evans v. State, 872 A.2d 539 (Del. 2005). However, TIS did not eliminate conditional release. Crosby v. State, 824 A.2d at 899-900. An inmate whose sentence is reduced by good time credits must "remain on conditional release until the maximum expiration of his prison term." Snyder v. Andrews, 708 A.2d 237, 247 (Del. 1998); Dixon v. Williams, Del. Super., C.A. No. 00M-08-023, Herlihy, J. (Aug. 31, 2000).

Defendant clarified that he had been over the Plea Agreement and the Truth in Sentencing Guilty Plea Form and that he understood the statutory sentencing range as well as the TIS guidelines. There was no answer placed beside the following question on the TIS Guilty Plea Form:

> Do you understand that, if incarcerated, you will not be eligible for parole and the amount of early release credits which you may earn will be limited to a maximum of ninety (90) days per year?

However, again, he did affirm he had reviewed the form and understood everything contained in it. Transcript of August 20, 1991 Proceedings at page 5 ("Trans. at __").

Defendant's trial attorney stated:

> He understands that the total consecutive maximum penalty provided by law for the charges that he is entering a plea to today is live [sic] plus forty years. He understands that there is a minimum-mandatory total of nineteen on these charges.

Id.

---

[8]In 11 Del. C. § 4205(j), it is provided: "No sentence to Level V incarceration imposed pursuant to this section is subject to parole."

[9]In 11 Del. C. § 4354, it is provided: "No sentence imposed pursuant to the provisions of the Truth in Sentencing Act of 1989 shall be subject to parole under the provisions of this subchapter."

The Court discussed the plea with defendant:

> THE COURT: Has anybody promised you what the sentence would be?
>
> THE DEFENDANT: No.
>
> THE COURT: For clarification, the minimum sentence is nineteen years. That is not minimum-mandatory, as I understand it. He has to be sentenced to nineteen years, but it is parolable?
>
> MR. ADKINS: That's correct. It is minimum.
>
> THE COURT: Minimum, but not minimum-mandatory. Do you understand the minimum sentence, the starting sentence, that the Judge will have is nineteen years? That is parolable. Do you understand that?
>
> THE DEFENDANT: Yes.

Trans. at 12.

Defendant argues that this comment about his sentence being parolable was incorrect and by being so, his rights were violated. However, the statement was not incorrect. The Court was explaining that the minimum sentence of 19 years, because it was not a minimum-mandatory sentence, was subject to good time credits pursuant to 11 Del. C. § 4381. That meant that defendant could be conditionally released before the end of his prison term. 11 Del. C. § 4348. A person released pursuant to the non-discretionary terms of 11 Del. C. § 4348 is "deemed as released on parole until the maximum expiration of the maximum term or terms for which the person is sentenced." Id. "[I]nsofar as the terms and conditions of non-custodial status are concerned, there is little practical difference between release on parole under section 4346 and conditional release under section 4348." Evans v. State, 872 A.2d at 554, citing Jackson v. State, supra at 1206. Although less confusing terminology would have been "conditional release" or "subject to good time", the Court did not incorrectly inform defendant that his sentence was "parolable".

Furthermore, as the following shows, I conclude the use of "parolable" did not mislead defendant.

At the time defendant entered the plea, he was facing trial for attempted murder in the first degree, 2 counts of unlawful sexual intercourse in the first degree, burglary in the first degree, 2 counts of robbery in the first degree, kidnapping in the first degree, possession of a deadly weapon during the commission of a felony, and other less serious felonies. Defendant accepted a plea whereby he knew he could receive a life sentence for the unlawful sexual intercourse in the first degree (rape) conviction. He knew he could get 40 years on the robbery charges. This was not a Criminal Rule 11(e)(1)(c) plea where the Court was bound by the sentence recommendation or had to let defendant withdraw the plea. In other words, defendant knew he could have gone to jail for the rest of his life. He also knew that the Truth in Sentencing statute was applicable. Trans. at 13. Based on the facts of the case, I am fully satisfied that the Court's choice of the word "parolable" did not mislead him.

Since defendant was not provided incorrect information, since he confirmed he understood early release from incarceration was limited to a maximum of 90 days per year, and since he knew TIS applied, defendant has not shown that a miscarriage of justice occurred. Consequently, the bars of Rule 61(i)(1), (2), and (3) apply. Thus, I deny defendant's motion for postconviction relief.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

cc: Prothonotary's Office
James Adkins, Esquire