

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

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

October 17, 2006

N440 - State Mail  
Barry L. Bradley  
SBI No.  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

**RE: State v. Barry Bradley**  
**Defendant ID No. 0312019460 (R-1)**  
**Motion for Postconviction Relief**

Dear Mr. Bradley:

On June 8, 2006, the Court received your Motion for Postconviction Relief. Pursuant to Superior Court Criminal Rule 61(g), I expanded the record requesting that Mr. Callaway respond to your allegations. He did so pursuant to the Rule by way of Affidavit. His response came on June 29, 2006. Thereafter, you requested additional time to file your Rule 61(i)(g) response. On October 2, 2006, the Court received "Petitioner's Opening Brief and Memorandum of Law for Postconviction Relief". The Court did not receive a Rule 61(g) response.

After taking into consideration the transcript of the guilty plea of March 9, 2005, petitioner's pleadings, and Mr. Callaway's Rule 61(i)(g) response, I am denying the Motion for Postconviction Relief.

On March 9, 2005, you pled guilty to possession of a firearm during the commission of a felony, possession of a deadly weapon by person prohibited, and to robbery in the 1<sup>st</sup> degree. You had recently returned from the State of Maryland where you pled guilty in Federal Court to a bank robbery. The time you received on that charge was to be concurrent with whatever time you received and served in the State of Delaware. In other words, your federal time would be served under the sentence you obtained in Delaware.

The Delaware sentence was pursuant to plea negotiations whereby the recommendation on the robbery charge was five years Level V; on the possession of a firearm during the commission of a felony, 5 years Level V; and on the possession of a deadly weapon by a person prohibited, 1 year on Level V. I accepted the recommendations concerning the Level V time but imposed a sentence on the robbery charge of 10 years suspended after serving 5 years for 5 years Level III probation. In other words, I found the sentence negotiated by the Defendant and the State to be reasonable with the exception that there should be a lengthy period of probation following the incarceration on these serious offenses.

Your Motion for Postconviction Relief comes within three years of the date of your sentencing, and raises a claim of ineffective assistance of counsel. It is not procedurally barred.

Your claim of ineffective assistance of counsel boils down to being misled about the amount of time you were going to get and that you had been promised you would get Work Release following your mandatory time. Mr. Callaway denies these allegations in his Rule 61(g) affidavit.

Pursuant to *Strickland v. Washington*, 466 U. S. 668 (1984), in order for the defendant to establish ineffective assistance of counsel he must show that his attorney was objectively deficient in his representation of the defendant, and that the attorney's deficient performance actually caused the defendant prejudice.

In this case, you were placed under oath at the time you pled guilty. A complete Superior Court Criminal Rule 11 colloquy took place concerning the plea. You were specifically asked if any promises had been made to you, and you said No. At the conclusion of the colloquy, I asked you if you had any issues, problems, complaints to speak now or forever hold your peace. You had no problems. You specifically received the Level V time that was negotiated and is contained in the plea agreement. There is no mention of Work Release in the plea agreement and you advised the Court that you had not been promised anything. I find your present claims to be not credible based upon the statements you made to the Court under oath at the time of the plea, and the statements which your attorney has made under oath pursuant to Rule 61(i)(g).

Therefore, I do not find you have met your burden under the first prong of *Strickland*. You have not established that your attorney made any misrepresentations to you as far as the sentencing.

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Defendant's Motion for Postconviction Relief is denied.

**IT IS SO ORDERED.**

Yours very truly,

T. Henley Graves

THG:baj  
cc: Prothonotary  
Department of Justice  
Office of the Public Defender