

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

STATE OF DELAWARE	)	
	)	
v.	)	I.D. No. 0308006394
	)	
ASUNCION R. SANCHEZ,	)	Cr. A. No. IN03-08-1355R1
	)	
Defendant.	)	

Submitted: December 1, 2006  
Decided: December 4, 2006

UPON CONSIDERATION OF DEFENDANT’S *PRO SE*  
MOTION FOR POSTCONVICTION RELIEF  
**SUMMARILY DISMISSED.**

This 4<sup>th</sup> day of December, 2006, upon consideration of defendant Asuncion R. Sanchez’s motion for postconviction relief, it appears to the Court that:

1. Asuncion R. Sanchez (“Sanchez”) was charged with Murder First Degree, Possession of a Deadly Weapon During the Commission of a Felony, and Conspiracy First Degree.<sup>1</sup> He accepted an offer to plead guilty

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<sup>1</sup> See DEL. CODE ANN. tit. 11, § 636; DEL. CODE ANN. tit. 11, § 1447; DEL. CODE ANN. tit. 11, § 513.

to Murder Second Degree<sup>2</sup> and was sentenced to 20 years in prison followed by probation.<sup>3</sup> Sanchez filed no appeal.

2. Sanchez has now filed this *pro se* motion for postconviction relief. He argues that his rights under the Sixth and Fourteenth Amendments of the United States Constitution were violated. Specifically, Sanchez claims that, because he is a Mexican national and does not speak English, he should have been afforded a translator since he could not understand the charges against him or any of what was said at the hearings and proceedings. Sanchez also maintains that his birth date is two years later than the date recorded on the Court's criminal docket, thus making him under the age of 18 at the time of his arrest. He, therefore, argues that an amenability hearing should have occurred in Family Court prior to him being charged as an adult in Superior Court. Lastly, Sanchez asserts an ineffective assistance of counsel claim primarily alleging that his attorney coerced him into pleading guilty by forcing him to sign documents which he did not understand. He also contends that his attorney never fully explained the charges and failed to adequately investigate the facts of the case. According to Sanchez, counsel's actions, or lack thereof, fell below an objective standard of

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<sup>2</sup> See DEL. CODE ANN. tit. 11, § 635.

<sup>3</sup> See Docket 11-13.

reasonableness and, but for counsel's errors, he would not have plead guilty. As a result, Sanchez argues that he did not enter his plea knowingly and voluntarily and, thus, seeks to withdrawal his guilty plea.<sup>4</sup>

3. Prior to addressing the substantive merits of any claim for postconviction relief, the Court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61 ("Rule 61").<sup>5</sup> If the procedural requirements of Rule 61 are not met, in order to protect the integrity of the procedural rules, the Court should not consider the merits of a postconviction claim.<sup>6</sup>

4. Rule 61(i) imposes four procedural imperatives: (1) the motion must be filed within three years of a final order of conviction;<sup>7</sup> (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 formally adjudicated in any proceeding. However, under Rule

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<sup>4</sup> See Docket 14, p. 3, 11-18.

<sup>5</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). See also *Bailey v. State*, 588 A.2d 1121, 1127 (Del. Super. Ct. 1991).

<sup>6</sup> *State v. Gattis*, 1995 WL 790961, at \*2 (Del. Super. Ct. Dec. 28, 1995) (citing *Younger*, 580 A.2d at 554).

<sup>7</sup> The motion must be filed within three years if the final order of conviction occurred before July 1, 2005, and within one year if the final order of conviction occurred on or after July 1, 2005. See Rule 61, annot. *Effect of amendments*.

61(i)(5), the bars to relief under (1), (2) and (3) do 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.”

5. In applying the procedural imperatives to this case, Sanchez’s claims are not barred. His motion was filed within three years of sentencing, he has had no prior postconviction motions, and there was no trial, direct appeal or any other proceeding where his claims could have been formally adjudicated. Therefore, the substantive merits of Sanchez’s motion will be addressed.

**A. Translator**

6. Sanchez claims that he should have been provided a translator because he does not speak English and, as such, he was unable to understand the charges against him or any of what was said at the hearings and proceedings. However, Sanchez *was* provided a translator. A review of the transcripts of the plea colloquy on April 19, 2004 and the sentencing on August 13, 2004 clearly show that a translator was present and was, on both occasions, identified for the record.<sup>8</sup> Therefore, Sanchez’s claim that his

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<sup>8</sup> See Docket 16, 17.

constitutional rights were violated because he was not provided a translator is not factually supported.

**B. Sanchez's Age**

7. Sanchez claims his date of birth is two years later than what is recorded on the Court's criminal docket. This would have made him 17 at the time the crime was committed and when he was arrested.<sup>9</sup> He contends that because he was still a minor at the time of his arrest, an amenability hearing in Family Court should have occurred prior to him being charged as an adult in Superior Court. This argument is unavailing.

8. Del. Code Ann. tit. 10, § 1010(a)(1) provides: "A child shall be proceeded against as an adult where ... [t]he acts alleged to have been committed constitute first or second degree murder." Therefore, even if Sanchez was 17 at the time of his arrest, it was still appropriate to proceed against him as an adult in Superior Court because he was charged with first degree murder.

9. Further, although not directly addressed by Sanchez, his allegation that he was a minor at the time of his arrest gives rise to the question of whether it was error to not provide him a reverse amenability hearing pursuant to DEL. CODE ANN. tit. 10, § 1011 and Superior Court

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<sup>9</sup> The docket states Sanchez's birth date is October 19, 1983. Sanchez claims his actual birth date is October 18, 1985. *See* Docket 14, p. 9.

Criminal Rule 19. Even assuming, however, that Sanchez was 17 at the time of his arrest (which is entirely unsupported), given the Court’s finding that Sanchez voluntarily entered his plea, *see infra* C., he has waived any right he may have had to such a hearing.<sup>10</sup>

### C. Ineffective Assistance of Counsel

10. There are two components to an ineffective assistance of counsel claim, both of which a defendant must establish to prevail: (1) counsel's representation fell below an objective standard of reasonableness; and (2) counsel's actions were prejudicial to the defense, creating a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.<sup>11</sup> “Under the first prong there is a ‘strong presumption that the representation was professionally reasonable’

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<sup>10</sup> *See Smith v. State*, 2004 WL 120530, at \*1 (Del. Jan. 15, 2004) (“A voluntary guilty plea waives a defendant’s right to challenge any errors or defects before the plea, even those of constitutional dimension.”); *Perkins v. State*, 2006 WL 3053271, at \*1 (Del. Oct. 27, 2006) (“Delaware law provides that a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea.”); *Rodriguez v. State*, 2003 WL 1857547, at \*1 (Del. Apr. 7, 2003) (Defendant’s “guilty plea ... eliminates his claim relating to events that occurred before the entry of the plea[.]”); *State v. Davis*, 1999 WL 743588, at \*12 (Del. Super. Ct. July 2, 1999) (Defendant “contends the reverse amenability hearing is mandatory and is not subject to waiver. ... He cites, however, no authority for the proposition that such a hearing is mandatory. ... [Section] 1011(b) ‘[p]ermits, but does not require’ such a hearing. Constitutional rights to silence and counsel are not absolute and can be waived, so it hardly seems worth saying a statutory proceeding cannot be waived.”).

<sup>11</sup> *See Strickland v. Washington*, 466 U.S. 668, 687-694 (1984); *State v. Flonnory*, 2003 WL 22455188, at \*1 (Del. Super. Ct. Oct. 29, 2003).

and, under the second prong, a defendant must affirmatively prove prejudice.”<sup>12</sup>

11. Sanchez has failed to meet this burden. His claims that his attorney coerced him into pleading guilty, never fully explained the charges, and failed to adequately investigate the facts of the case are entirely conclusory and unsubstantiated.<sup>13</sup> Sanchez offers no support for his accusations that his attorney engaged in any such conduct. His brief in support of his motion is riddled with mere accusations for which there is no corroboration.<sup>14</sup> Therefore, because “[c]onclusory claims raised in a defendant’s motion for postconviction relief are insufficient to prove ineffective assistance of counsel,” Sanchez’s claim must fail.<sup>15</sup>

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<sup>12</sup> *Fletcher v. State*, 2006 WL 1237088, at \*2 (Del. Super. Ct. May 9, 2006) (citation omitted).

<sup>13</sup> See Docket 14, p. 11-18.

<sup>14</sup> See *id.*

<sup>15</sup> *State v. Brown*, 1998 WL 735880, at \*3 (Del. Super. Ct. Aug. 20, 1998). See also *State v. Dividu*, 1992 WL 52348, at \*2 (Del. Super. Ct. Feb. 12, 1992) (“[M]ovant has failed to provide any factual support for his perfunctory allegations. He does not state, for example, in what regard his counsel failed to prepare for trial[.] As Rule 61(b)(2) obviously contemplated, without this information I am unable to effectively evaluate the merit of movant’s claims.”); *State v. Canon*, 1999 WL 1441997, at \*3 (Del. Super. Ct. Dec. 9, 1999) (The Court found Defendant’s claim, that counsel “failed to investigate the case,” “repetitive, vague, and entirely conclusory, warranting summary dismissal.”); *Zimmerman v. State*, 1991 WL 190298, at \*1 (Del. Super. Ct. Sept. 17, 1991) (citations omitted) (“This Court will not address Rule 61 claims that are conclusory and unsubstantiated.”).

12. Moreover, a review of the transcript from the plea colloquy reveals that the Court engaged in a thorough discussion with Sanchez as to the nature and consequences of his decision to plead guilty. The record shows Sanchez confirmed, in open court and on his signed “Truth-In-Sentencing Guilty Plea Form” (which was provided to him in Spanish), that he carefully reviewed the plea agreement with his attorney, he was freely and voluntarily pleading guilty to Murder Second Degree, his attorney had not forced or threatened him to plead guilty, and that he was satisfied with his attorney’s representation. There being an absence of clear and convincing evidence to the contrary, Sanchez is bound by those representations.<sup>16</sup> Accordingly, the Court finds that Sanchez entered his plea agreement knowingly, intelligently and voluntarily.

13. Based on the foregoing, Sanchez’s Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

**IT IS SO ORDERED.**

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**Peggy L. Ableman, Judge**

Original to Prothonotary

cc: Asuncion R. Sanchez  
Dean C. DelCollo, Esq.  
Diane C. Walsh, Esq.

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<sup>16</sup> *Felix v. State*, 2006 WL 1971786, at \*2 (Del. July 14, 2006).