

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

STATE OF DELAWARE	)	
	)	
v.	)	I.D. # 9506009638
	)	
LARRY THOMAS,	)	
	)	
Defendant	)	
	)	

Submitted: November 29, 2006  
Decided: December 27, 2006

Upon Defendant's Motion for Postconviction Relief.  
**DENIED.**

**ORDER**

Josette D. Manning, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Michael W. Modica, Esquire, Wilmington, Delaware, Attorney for Larry Thomas.

COOCH, J.

This 27th day of December 2006, upon consideration of Defendant's motion for postconviction relief, it appears to the Court that:

1. On June 14, 1995, Defendant was a passenger in a car which was stopped on the side of road. A police officer approached the vehicle in order

to render assistance. After a brief conversation with the driver, the police officer began to search the vehicle and the driver and Defendant fled on foot. The police officer found over 233 grams of cocaine in the car. Defendant was indicted on July 10, 1995 on the charges of Trafficking in Cocaine, Possession with Intent to Deliver Cocaine, Use of a Vehicle for Keeping Controlled Substances, Conspiracy Second Degree, and Resisting Arrest. A warrant was issued pursuant to Superior Court Criminal Rule 9 on April 2, 1998 and the warrant was returned on March 22, 2004. A jury found Defendant guilty of all charges except Resisting Arrest on December 14, 2004. Defendant was sentenced to a mandatory minimum sentence of fifteen years at Level 5 on the trafficking charge and probation on the remaining counts. The Supreme Court affirmed his conviction on November 10, 2005.<sup>1</sup>

2. Defendant filed this timely motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”) on September 15, 2006. Defendant’s motion states three grounds for relief which are all alleged instances of ineffective assistance of counsel.

3. To succeed on an ineffective assistance of counsel claim, Defendant must show both (a) “that counsel’s representation fell below an objective

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<sup>1</sup> *Thomas v. State*, 886 A.2d 1278 (Del. 2005).

standard of reasonableness” and (b) “that there is a real probability that, but for the counsel’s unprofessional errors, the result of the proceeding would have been different.”<sup>2</sup> Furthermore, when evaluating counsel’s performance, “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of professional assistance.”<sup>3</sup>

4. Defendant’s first ground for relief claims that Defendant’s trial counsel was ineffective by failing to file a motion to dismiss pursuant to Superior Court Criminal Rule 48(b). The Court has discretionary power under Rule 48(b) to dismiss an indictment if there has been an “unnecessary delay in bringing a defendant to trial.” Defendant’s prior counsel did in fact file a motion to dismiss on speedy trial grounds which was denied by the Court on August 16, 2004. The arguments presented and rejected by the Court on that date are essentially the same arguments that Defendant makes in his present motion. As trial counsel stated in his affidavit, after reviewing the prior motion to dismiss and the relevant law, he could not find a good faith basis to file another such motion. Therefore, counsel’s decision did not fall below an objective standard of reasonableness and Defendant is not entitled to relief on this ground.

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<sup>2</sup> *Stickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>3</sup> *Id.* at 689.

5. Defendant next alleges that his trial counsel was ineffective by failing to contest the police search of the vehicle in which the drugs were found.

Trial counsel notes in his affidavit, however, that the police report stated that the driver consented to the search. Moreover, trial counsel asserts that “Defendant denied having any recollection of the event and . . . had no testimony or information to challenge the arresting officer’s version of events.”<sup>4</sup> With seemingly no colorable grounds to contest the search, counsel’s failure to file a motion to suppress was not unreasonable.<sup>5</sup>

6. Defendant’s final ground asserts that his trial counsel was ineffective by failing to object to certain testimony regarding Defendant’s criminal history and by failing to move for a mistrial based on the admission of that testimony. During the State’s case in chief, the prosecutor elicited the following response from the police officer who searched the car: “After returning back to our headquarters a criminal history check was performed . . .” Counsel immediately objected to the testimony and that testimony was excluded. Additionally, the Court instructed the jury to disregard the testimony and to give it no weight in their deliberations. There was no further testimony relating to Defendant’s criminal history, if any. Trial

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<sup>4</sup> Ralph D. Wilkinson Aff. at 2.

<sup>5</sup> *Strickland*, 466 U.S. at 689 (“It is all tempting for a defendant to second-guess counsel’s assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.”).

counsel's decision not to move for a mistrial under these circumstances is supported by Delaware case law.<sup>6</sup> Therefore, because Defendant has not alleged any facts to suggest that counsel's conduct fell below an objective standard of reasonableness, Defendant has not satisfied the requirements for an ineffective assistance of counsel claim.

7. For the reasons stated, Defendant's Motion for Postconviction Relief is **DENIED**.

**IT IS SO ORDERED.**

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Richard R. Cooch, J.

oc: Prothonotary  
cc: Investigative Services  
Ralph D. Wilkinson, IV, Esquire

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<sup>6</sup> See *Johnson v. State*, 2006 WL 3759403 (Del. Supr.) (affirming the trial court's denial of a mistrial where the Court gave a curative instruction after two State witnesses made vague references to Johnson being "known" by police). See also *Hendricks v. State*, 871 A.2d 1118, 1122 (Del. 2005) (stating a mistrial should only be granted when there is a "manifest necessity" or the "ends of public justice would be otherwise defeated" (quoting *Steckel v. State*, 711 A.2d 5, 11 (Del. 1998))). See also *Pena v. State*, 856 A.2d 548, 551 (Del. 2004) ("Prompt jury instructions are presumed to cure error and adequately direct the jury to disregard improper statements, even when the error references extraneous offenses.").

