

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

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 0305001806
	)	
GLEN W. DUCOTE,	)	
	)	
Defendant.	)	

Submitted: September 20, 2006  
Decided: December 29, 2006

**On Defendant's *Pro Se* Motion for Postconviction Relief. DENIED.**

**ORDER**

Diane C. Walsh, Deputy Attorney General, Wilmington, Delaware 19801.

Glen W. Ducote, Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware 19977. *Pro se.*

**CARPENTER, J.**

On this 29<sup>th</sup> day of December, 2006, upon consideration of Defendant's Motion for Postconviction Relief it appears to the Court that:

1. Glen W. Ducote, ("Defendant"), has filed a *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"), to which the State has responded. At the request of the Court, Defendant's trial attorney, James Brendan O'Neill, Esquire ("Counsel"), filed an affidavit refuting the allegations of ineffective assistance of counsel. For the reasons set forth below, Defendant's Motion for Postconviction Relief is **DENIED**.

2. On January 13, 2004 a three-day jury trial commenced resulting in the Defendant being found guilty of Attempted Murder First Degree, Kidnaping First Degree and Possession of a Deadly Weapon During the Commission of a Felony. Mr. Ducote was also convicted of Possession of a Deadly Weapon by a Person Prohibited in a separate proceeding. The Defendant was sentenced for these crimes on March 19, 2004. Thereafter, Mr. Ducote's appeal to the Supreme Court of Delaware was denied, and a mandate was issued on June 8, 2005.

3. The Defendant filed this motion for postconviction relief on June 6, 2006, and both the State and trial counsel have filed responses to Mr. Ducote's motion. Within his motion, the Defendant professes that his trial counsel was ineffective for three reasons: 1) trial counsel failed to properly cross-examine the

State's witnesses or to present any witnesses on behalf of his defense; 2) trial counsel failed to investigate the Defendant's story regarding the victim previously harming the Defendant; and 3) trial counsel failed to conduct the jury *voir dire* properly. Upon review of the record, there appears to be no basis to preclude the Defendant's motion pursuant to Rule 61(i), thus the Court addresses each of the Defendant's three assertions below.<sup>1</sup>

4. Every defendant is entitled to counsel to protect his fundamental right to a fair trial pursuant to the Sixth Amendment,<sup>2</sup> and it is a well-established standard that this means all defendants are entitled to "reasonably effective assistance."<sup>3</sup> It is the defendant's burden to establish that counsel did not provide reasonably effective assistance at trial, and to do so, he must meet the two-part test instituted in *Strickland v. Washington*:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.<sup>4</sup>

---

<sup>1</sup>*Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) (citing *Harris v. Reed*, 489 U.S. 255, 265 (1989)).

<sup>2</sup>*Strickland v. Washington*, 466 U.S. 668, 684 (1984) (citations omitted).

<sup>3</sup>*Id.* at 683 (citing *Trapnell v. U.S.*, 725 F.2d 149, 151-152 (CA2 1983)).

<sup>4</sup>*Id.* at 687.

Because each case represents new challenges and different facts, counsel must not be restricted in his tactical decisions in conducting a defense.<sup>5</sup> Thus, there is a strong presumption that the actions of trial counsel were trial strategy, and those actions will not be questioned simply because the strategy was unsuccessful.<sup>6</sup> To overcome this “strong presumption that the representation was professionally reasonable,” a defendant must provide more than mere vague and conclusory claims for the Court to examine.<sup>7</sup>

5. A vague and conclusory claim is one which lacks specificity<sup>8</sup> and fails to explain how the defendant was prejudiced by the trial counsel’s actions.<sup>9</sup> There must be a reasonable probability that, but for trial counsel’s error, the outcome would have been different.<sup>10</sup> Here, Mr. Ducote’s three claims fail to provide more than mere

---

<sup>5</sup>*Strickland*, 466 U.S. at 690. (“No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.”).

<sup>6</sup>*State v. Wright*, 653 A.2d 288, 297 (Del. Super. Ct. 1994) (“Although defense counsel’s strategy, in retrospect, was unsuccessful, it is not proper for this Court to determine ineffectiveness based on outcome.” citing *Lockhart v. Fretwell*, 506 U.S. 364 (1993)).

<sup>7</sup>*Evans v. State*, 795 A.2d 667 (Del. 2002).

<sup>8</sup>*State v. St. Louis*, 2004 WL 2153645, at \*3 (Del. Super. Ct.) (The court rendered Mr. St. Louis’ claim that his trial counsel was ineffective because he failed to interview witnesses, vague and conclusory. The Court indicated that while the defendant provided the court with names of those witnesses which he thought should have been interviewed, the defendant failed to advise the court how the witnesses would have testified, and thus lacked the required specificity.)

<sup>9</sup>*State v. Dawson*, 681 A.2d 407, 422 (Del. Super. Ct. 1995); *State v. Johnson*, 2001 WL 282831, at \*1 (Del. Super. Ct.) (“the Court will not address Rule 61 motions that are conclusory or unsubstantiated.”) (citations omitted).

<sup>10</sup>*State v. Cabbage*, 2005 WL 914470, at \*11 (Del. Super. Ct.) (“Defendant also speculates that if he had been aware of this evidence, then the defense might have had DNA testing done on it to obtain information which might have impeached Wilson. This argument is too speculative to establish a reasonable probability that the outcome would have been different. It fails.”) (Citing *Younger v. State*, 580 A.2d at 555, 556)).

speculation. Because these claims are not concrete allegations of a serious deficiency by counsel, and because Mr. Ducote fails to show the requisite prejudice to him, there is no reasonable basis to conclude these alleged errors effected the outcome of the trial. As such, each assertion can be dismissed.<sup>11</sup>

6. Mr. Ducote's first ground for ineffective assistance of counsel asserts that his trial counsel failed to present a defense or effectively cross-examine the State's witnesses.<sup>12</sup> While this claim lacks specificity and therefore fails to overcome the presumption that counsel's actions were reasonable, and further fails to establish any prejudice to the Defendant, it also is simply not accurate. Mr. Ducote's counsel did cross-examine the trial witnesses except for the police officers, whose testimony was limited to a description of the crime scene and the Defendant's post-arrest statement. Since there was no dispute concerning these areas, it was reasonable to not question the officers. Otherwise, Mr. Ducote does not indicate who should have testified on his behalf and what testimony would have been elicited. He does not assert which questions should have been asked or what questions were improperly asked of the State's witnesses, and he fails to establish how the outcome of the trial

---

<sup>11</sup>*Strickland*, 466 U.S. at 694; *Duffy v. State*, 620 A.2d 857 (Del. 1992) (The Court did not address the merits of each claim because the defendant merely listed the errors of trial counsel, and failed to make any concrete or substantive allegations of how he was prejudiced at trial.).

<sup>12</sup>Mr. Ducote's first claim is as follows, in its entirety:

Ineffective assistance of counsel - Failure to present defense. Trial counsel failed to properly question state's witnesses and failed to call any witnesses for the defense or present any defense whatsoever.

Def. Mot.

would have been effected by a different cross-examination of the State's witnesses. This Court cannot speculate as to what witnesses would have said or as to who should have been called to testify, and as a result, this claim is unfounded and therefore dismissed.<sup>13</sup>

7. The second claim Mr. Ducote asserts is that his trial counsel was ineffective for failure to investigate his claim that the victim was involved in a plot which led to him being shot three times prior to this incident.<sup>14</sup> This claim can also be dismissed as vague and conclusory.<sup>15</sup> First, pursuant to trial counsel's affidavit, Mr. Ducote first brought the story that he was shot through a plot involving the victim to light on the eve of trial, and at that time Mr. Ducote did not provide any witnesses or information to allow trial counsel to investigate.<sup>16</sup> In fact, according to trial counsel's affidavit, Mr. Ducote did not provide any information to counsel to assist

---

<sup>13</sup>*Dawson*, 681 A.2d at 422 (“Dawson has neither explained how the cross-examination was defective nor what additional facts could have been established from further questioning. This alone requires dismissal of the claim. Further, Dawson has not alleged or substantiated how the asserted shortcomings in cross-examination affected the result of the trial.”) (citing to *Flamer v. State*, 585 A.2d 736, 755 (Del. Super. Ct. 1990)); see also *White v. State*, 854 A.2d 1159 (Del. 2004) (Because the movant provided no support for his claim that counsel's error in cross-examination prejudiced him, the movant's claim failed.).

<sup>14</sup>Mr. Ducote's second claim is as follows, in its entirety:

Ineffective assistance of counsel - Failure to investigate. Trial counsel failed to investigate petitioner's case including the fact that the alleged victim was involved in a plot which led to the petitioner being shot three times prior to charged crime.

Def. Mot.

<sup>15</sup>*State v. Johnson*, 2001 WL 282831, at \*1 (Del. super. Ct.).

<sup>16</sup>O'Neill Aff., at 4. (“Mr. Ducote never provided any details about who, when, where, how or why. Mr. Ducote just claimed there was a plot but could not provide any leads for defense counsel to pursue, especially immediately before the trial was about to start.”).

in his defense because he was convinced the victim, Ms. Bare, would not testify against him.<sup>17</sup> Nevertheless, even if counsel was provided the appropriate information to investigate Mr. Ducote's claim, it is not clear to this Court how testimony regarding this alleged plot with the victim would assist Mr. Ducote's defense. In fact, Mr. O'Neill's affidavit and the State's response both indicate any introduction of this plot would have likely hindered the defense by providing a motive for Mr. Ducote to kill Ms. Bare, thereby extinguishing the defense strategy that Mr. Ducote did not intend to kill her.<sup>18</sup> Mr. Ducote offers nothing to contradict trial counsel's affidavit or the State's response and does not overcome the presumption that the representation was reasonable.<sup>19</sup> As such, this claim is baseless.

8. In addition, Mr. Ducote's claim that trial counsel was ineffective for failure to put on a defense lacks merit. Mr. Ducote again fails to indicate who should have been called as a witness or what additional evidence should have been entered on his behalf.<sup>20</sup> He further fails to indicate how this additional evidence or testimony would have effected the outcome of the trial. What information provided by the

---

<sup>17</sup>*Id.*

<sup>18</sup>*Id.*; State Resp., at 2.

<sup>19</sup>*State v. White*, 2004 WL 98720, at \*2 (Del. Super. Ct.) (Since the defendant only made conclusory allegations that his trial attorney failed to investigate his claims and therefore the defendant lost an opportunity to discredit a witness's testimony, the court dismissed the defendant's claim of ineffective assistance of counsel.), *aff'd*, 854 A.2d 1159 (Del. 2004).

<sup>20</sup>*St. Louis*, 2004 WL 2153645, at \*3 (The defendant provided names of witnesses to the court within his petition and stated that his trial counsel was ineffective for not calling each witness on the defendant's behalf. However, because the defendant failed to state what each witnesses' testimony would have been, the defendant's claim failed as vague and conclusory.).

Defendant to assist his counsel was investigated by his counsel and most was unable to be substantiated or helpful. As such, Mr. Ducote's claim fails both prongs of the *Strickland* test, and his second claim is dismissed.

9. Lastly, Mr. Ducote's third claim of ineffective assistance of counsel asserts that counsel improperly conducted the jury *voir dire* leaving jury members who were biased against the Defendant.<sup>21</sup> Mr. Ducote again fails to support his claim or establish how the outcome of the trial would have been different if certain jury members were excluded from the trial through *voir dire* or peremptory challenges.<sup>22</sup> Mr. Ducote does not state which juror he believed was biased nor for what reason he concluded the juror was biased. Mr. Ducote does not elaborate as to how the juror was biased in the State's favor, nor does he provide *voir dire* questions which should have been asked by the Court. The facts are that his counsel provided the Court with suggested *voir dire* that was asked by the Court and his counsel exhausted all of his peremptory challenges. Because Mr. Ducote fails to show support for his claim to overcome the presumption of reasonableness and because he fails to satisfy the

---

<sup>21</sup>Mr. Ducote's final claim states as follows, in its entirety:

Ineffective assistance of counsel - Improper jury voir dire. Trial counsel failed to properly conduct jury voir dire or request the Court to strike jury panel members who were biased in favor of State or State's witnesses

Def. Mot.

<sup>22</sup>*State v. Folks*, 2006 WL 2742315 (Del. Super. Ct.) (Defendant provided no specific evidence to support his claim, and failed to establish any prejudice resulted in the manner the jury was selected. As a result, his claim was denied.).



prejudice requirement pursuant to *Strickland*, Mr. Ducote's third claim is also without merit, and is hereby dismissed.

10. For the foregoing reasons, Mr. Ducote's Motion for Postconviction Relief is hereby denied.

IT IS SO ORDERED.

---

Judge William C. Carpenter, Jr.