

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

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID. No. 1006014814
)	
JUAN MORALES,)	
)	
Defendant.)	

Submitted: November 19, 2012
Decided: March 20, 2013

**Upon Defendant’s Motion for Postconviction Relief –
*DENIED***

This decides Defendant’s first motion for postconviction relief following his January 4, 2011 guilty plea and June 3, 2011 sentencing. Claiming ineffective assistance of counsel, Defendant argues that his plea was not knowingly and voluntarily entered. Basically, to the exclusion of any fact that is unhelpful to him, Defendant emphasizes mistakes in the plea paperwork, especially its incorrect reference to his eligibility for habitual offender sentencing. Defendant also argues that the court abused its discretion by accepting the plea as knowing and voluntary, and by “enhancing” the sentence with erroneous habitual offender information.

1. Between June and November 2010, Defendant was arrested four times, for four separate crimes.¹ The challenged plea stemmed from a home burglary that occurred between June 11-13, 2010, at Defendant's former in-laws' house. Defendant was arrested on June 17, 2010, and subsequently indicted on four felony charges, including burglary second degree.

2. Instead of going to trial on January 4, 2011, Defendant pleaded guilty to burglary second degree and, in exchange, the State dismissed related charges and another indictment. As presented below, Defendant got a good deal. The plea agreement was drafted, however, in the erroneous belief that Defendant was eligible to be sentenced as a habitual offender pursuant to 11 *Del. C.* § 4214(a). As it turned out, Defendant committed one of the necessary predicates when he was a juvenile.

3. Understanding the plea's background is critical to understanding the outcome here. The State had Defendant dead to rights. The police found him with the stolen property and, after *Miranda* warnings, Defendant confessed. As Defendant had burglarized the home of people he knew, the State had circumstantial evidence of opportunity. And, because Defendant was in the throes of a raging drug addiction, he had a motive to steal from people who had trusted him. Besides all that, a victim appeared at sentencing and expressed anger and resentment. Thus, it is unlikely that

¹ See Cr. ID. Nos.: 1011012505, 1011004057, 1010013979, and 1006014814.

the State was struggling with uncooperative witnesses. In the State's parlance, this was a "slam dunk." Moreover, Defendant faced trial in a second indictment,² and that was a serious case, too. Again, Defendant's record is so bad that he only avoided a habitual offender sentence because his misconduct started in childhood.

4. Considering Defendant's predicament, facing all-but-certain convictions on burglary and the related charges and another indictment, it is not surprising that Defendant does not swear he would have gone to trial had he known sentencing as a habitual offender was impossible. Much less does Defendant show how he would be better-off today had he gone to trial on January 4, 2011. By the same token, Defendant's predicament easily explains why at sentencing he did not raise the problem with the plea. And, it explains why he did not file a direct appeal challenging the quality of his plea.

5. Before the court accepted the plea, Defense counsel told the court that he and Defendant reviewed the guilty plea form "line by line," and after being advised of all the available Constitutional rights, Defendant agreed to waive those rights "in favor of resolving [this] case and an additional case by way of a plea" Counsel added that Defendant so chose based upon "an understanding of the evidence against him"

² Cr. ID. No. 1011012505.

6. Because the parties believed Defendant was a habitual offender, the plea agreement contained sentencing guidelines for habitual and non-habitual status. Counsel explained that the State had not decided whether to file a petition to declare Defendant a habitual offender. Accordingly, the possible prison term for each status was thoroughly discussed by the court, defense counsel, and Defendant.

7. The court held an exhaustive colloquy with Defendant, in part:

Court: [T]he best sentence you could hope for would be eight years in prison, could be as bad as life.

Now, if you are fortunate, then the State may choose not to file the habitual petition, in which case the minimum would be one year in prison and the maximum would be eight years. In other words, the best that you can hope for, [if] everything goes as good as it could . . . would be one year in prison for burglary second degree as a non-habitual offender. If you are non-habitual, it could be one to eight years. If you are habitual . . . it is eight to life. Are you following all that?

Defendant: Yes.

8. The court then asked if Defendant had any questions. At that point, Defendant balked about going forward that day in any way, either taking a plea or going to trial. The court told Defendant that entering a plea was his choice. Otherwise, a judge and jury were waiting to start trial. Defendant and his counsel took a moment off record. After Defendant confirmed he preferred a plea over trial, the court

continued to warn Defendant how important it was to express any concerns he had then, and not wait until another day.

9. During the colloquy, Defendant twice admitted his actual guilt, which he still does not deny. Besides repeatedly telling the court that he was in fact guilty, Defendant also insisted, orally and in writing, that he was satisfied with his court-appointed counsel's work on his behalf.

10. Lastly, the court asked Defendant if he was satisfied that entering the plea was a "knowing, voluntary, and intelligent thing that [he was] doing." Defendant answered, "Yes." He also put that in writing.

11. The court found Defendant's plea knowing, voluntary, and intelligent, which it was. That finding was based on more than Defendant's in-court admissions of guilt. In further part, the court believed Defendant knew what he was doing based on the colloquy and the informative papers that, according to him and defense counsel, Defendant had carefully read and signed. To be sure, there was inaccuracy about Defendant's eligibility for habitual offender sentencing, but otherwise, the plea colloquy was thorough and Defendant was not a first-offender. Additionally, as presented above, the court appreciated that the plea was a good deal for Defendant.

12. Before sentencing, the State realized that the criminal records it relied on were incorrect. Apparently, as mentioned above, both the State and defense counsel relied on juvenile adjudications that they erroneously listed as adult convictions. Therefore, the State could not move for habitual offender status, even if it had wanted to. Instead, as presented next, the State asked for the eight year maximum sentence.

13. On June 3, 2011, Defendant was sentenced to eight years at Level V, but suspended after six, followed by two years at Level IV Crest, and upon successful completion, the balance to be served at Level III Crest aftercare. Defendant was sentenced within the sentencing guidelines, albeit at the maximum. Thus, the sentence was not “enhanced” in that sense.

14. At sentencing, the State fully informed the court about the initial agreement to pursue habitual offender status and its error. The State clarified that Defendant was not eligible for habitual status at that point, but would be “the next time.”

15. The State recommended an eight year sentence based upon the case’s circumstances: the span of crimes in 2010; Defendant’s drug problem; Defendant’s violation of the victims’ trust; Defendant’s lack of remorse, and his poor record. As mentioned above, the State also presented a victim, Defendant’s former

mother-in-law. While the court accepted the State's presentation of aggravating circumstances and sentenced Defendant accordingly, the sentence was less than what the State asked for and it was within the guidelines.

16. Defendant had an opportunity at sentencing to address the court. Defendant apologized to the victims. He also stated his appreciation for defense counsel. Defendant did not suggest in the slightest that had he known he was ineligible for habitual offender sentencing, he would not have taken what turned out to be a highly favorable plea.

17. Defendant did not file a direct appeal. Instead, Defendant filed a motion for sentence modification on July 19, 2011. After that motion was denied by the sentencing judge, Defendant filed a second motion for sentence modification on August 29, 2011, and that was also denied. Finally, Defendant filed this motion for postconviction relief on December 14, 2011.

18. The court received the State's response on June 20, 2012, and Defendant's reply on July 3, 2012. Court-ordered transcripts were received by November 20, 2012.

19. Defendant's motion for postconviction relief is based on four, related claims. Defendant claims ineffective assistance of counsel for failing to "investigate" Defendant's record. Defendant claims counsel's "failure to investigate"

led to a “failure in communication,” meaning counsel did not advise Defendant against taking a plea. Defendant also confusingly argues that there were two sets of plea paperwork – some signed, some not – containing the habitual information, and that prevented him from making a “knowing, informed and voluntary” decision. Lastly, Defendant claims the court abused its discretion in accepting his plea and “enhancing” his sentence with erroneous habitual offender information.

20. Before the court may consider a Rule 61 motion’s merits, it must address the procedural bars enumerated in Rule 61(i).³ A Rule 61 motion that cannot overcome the procedural bars, absent an exception, must be denied.⁴

21. Rule 61(i) enumerates procedural bars, including failure to assert grounds for relief before or during trial, or on direct appeal.⁵ Under Rule 61(i)(5), Rule 61(i)’s procedural bars will not apply if a defendant presents “a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice.” Further, a defendant can avoid the Rule 61(i)(3) procedural default by

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁴ *See Flamer v. State*, 585 A.2d 736, 745 (Del. 1990).

⁵ Super. Ct. Crim. R. 61(i)(3).

showing cause for relief from the procedural bar, and prejudice from a violation of rights.⁶

22. Defendant's motion was timely, but Defendant's abuse of discretion claim is barred pursuant to Rule 61(i)(3). Defendant did not file a direct appeal, nor did he raise the sentence's excessiveness in his two motions for sentence modification. Defendant also fails to show cause and prejudice to overcome the procedural bar. Put another way, Defendant cannot argue here that the court erred by accepting his plea, even with the incorrect discussion of habitual offender status. Nor can Defendant challenge the sentence he received.

23. Defendant's ineffective assistance of counsel claims are not procedurally barred because those claims cannot be raised on direct appeal.⁷ A plea generally waives a defendant's right to bring ineffective assistance of counsel claims.⁸ The plea, however, "does not surrender the defendant's right to argue that the decision to enter into the plea was not knowing and voluntary because it was the result of ineffective assistance of counsel."⁹

⁶ Super. Ct. Crim. R. 61(i)(3)(A-B).

⁷ *Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986).

⁸ *Johnson v. State*, 962 A.2d 917 (Del. 2008) (TABLE).

⁹ *MacDonald v. State*, 778 A.2d 1064, 1074 (Del. 2001).

24. To succeed on an ineffective assistance of counsel claim, Defendant must show that: (1) trial counsel's representation fell below an objective standard of reasonableness and (2) counsel's conduct prejudiced Defendant.¹⁰ Defendant must overcome the presumption that counsel's representation was professionally reasonable.¹¹ In addition, prejudice must be shown and substantiated by concrete allegations.¹²

25. In this context, prejudice is "a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different."¹³ To establish prejudice here, Defendant "must demonstrate a reasonable probability that he would not have entered into the plea agreement, and instead would have gone to trial on the charges that were resolved by the guilty plea."¹⁴ Moreover, absent clear and convincing evidence otherwise, Defendant is bound by his statements during the plea and sentencing hearings.¹⁵

¹⁰ *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

¹¹ *Id.* at 689.

¹² *Younger*, 580 A.2d at 556.

¹³ *Dawson v. State*, 673 A.2d 1186, 1196 (Del. 1996).

¹⁴ *Wilson v. State*, 834 A.2d 68, 72 (Del. 2003).

¹⁵ *See Miller v. State*, 840 A.2d 1229, 1231 (Del. 2003)

26. Again, Defendant voiced appreciation for defense counsel at the sentencing hearing. At that point, Defendant undeniably knew of the mistake about the criminal records. The problem had come to light before sentencing and it was discussed at length. Thus, it can be said that Defendant failed to raise his ineffective assistance claims at the first opportunity – sentencing. And, as discussed above, Defendant did not challenge the plea and sentence through appeal.

27. As for the first *Strickland* prong, competence, the court is at a loss. There is little incentive to ensure accurate paperwork and mistakes are not uncommon. Nevertheless, this was a major prosecution. It had been pending for months. Yet, no one got to the bottom of Defendant's record during the case review process. As to the second prong, prejudice, discussed next, the court is clear.

28. Defendant fails to argue, much less argue convincingly, that had he known he was not a habitual offender, he would have gone to trial on this case, and the other cases. Before sentencing, Defendant had three additional open cases he would have had to deal with had the State not dropped them. Were it not for the plea, Defendant would have faced several trials and far harsher, multiple sentences. If Defendant's motions were granted now, all the cases would reappear on the Trial Calendar and, in the process, Defendant would give the State a golden opportunity to

get the two years it lost at sentencing, and many more years to boot. Wisely, Defendant has not offered his desire to now pursue these cases through trial.

29. As mentioned, the result actually disappointed the State. At sentencing, the State claimed, believably, that had it known Defendant would not have been declared a habitual offender, it would not have dismissed all the charges and other cases. Considering that, and the weight of evidence against Defendant, the resulting outcome would definitely have been different, but to a worse degree. To be clear, the court is not protecting Defendant from his own foolishness here. The record simply does not support giving the State another crack at him, even if that is what he wants. But, the court will caution Defendant a final time that if he manages to undo his plea, he will open himself up to a far worse outcome.

For the foregoing reasons, Defendant's motion for postconviction relief is **DENIED**. The Prothonotary **SHALL** notify Defendant.

IT IS SO ORDERED.

/s/ Fred S. Silverman
Judge

cc: Prothonotary
Daniel McBride, Deputy Attorney General
Juan Morales, Defendant