

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Cr. ID. No. 1006015765
)	
JAY M. RINGGOLD,)	
)	
Defendant.)	
)	

Submitted: November 27, 2013

Decided: February 10, 2014

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE DENIED
AND
COUNSEL’S MOTION TO WITHDRAW SHOULD BE GRANTED.**

Mark A. Denney, Jr., Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Brian J. Chapman, Esquire, 1232 N. King Street, Suite 300, Wilmington, Delaware,
19801, Attorney for Defendant Jay M. Ringgold.

PARKER, Commissioner

This 10th day of February, 2014, upon consideration of Defendant's Motion for Postconviction Relief and Defendant's Rule 61 Counsel's Motion to Withdraw, it appears to the Court that:

BACKGROUND AND PROCEDURAL HISTORY

1. On August 2, 2010, Defendant Jay M. Ringgold was indicted on one count of Possession of a Deadly Weapon by a Person Prohibited (hereinafter "PDWBPP").
2. The trial was continued once from December 2, 2010 to March 8, 2011, in order to allow DNA testing to be performed. The DNA results could have potentially been exculpatory and used in favor of the defense. The DNA results were, however, inconclusive and the court granted Defendant's motion in limine to exclude the DNA test results at trial.¹
3. Defendant Ringgold was tried before a Superior Court judge on March 9, 2011. At the conclusion of the bench trial, the Superior Court convicted Defendant Ringgold of PDWBPP. On June 3, 2011, the Superior Court declared Defendant Ringgold a habitual offender and sentenced him to eight years, minimum mandatory, at Level V.
4. Defendant filed a direct appeal to the Delaware Supreme Court. On direct appeal, Defendant's counsel filed a brief and a motion to withdraw pursuant to Superior Court Criminal Rule 26 (c). On March 20, 2012, the Delaware Supreme Court found Defendant's claims to be without merit and affirmed the conviction and sentence of the Superior Court.²

¹ See, Superior Court Docket No. 12.

² *Ringgold v. State*, 2012 WL 983199 (Del.).

FACTS

5. The charge at issue stems from the following facts as set forth by the Delaware Supreme Court in its opinion on Defendant's direct appeal.³

6. While executing a search warrant on June 18, 2010 in a drug investigation, Wilmington police detectives discovered a 9 mm semi-automatic handgun and holster in the basement of 2913 N. Washington Street, Wilmington, Delaware. From their prior surveillance of this residence, from identifying documents found in the storage box where the gun and holster were located, and from other evidence and observations, the police surmised that the gun and holster belonged to Defendant Ringgold. Defendant Ringgold was not present when the police executed the warrant.⁴

7. The other evidence and observations from which the police surmised that the gun and holster belonged to Defendant Ringgold included the fact that Ringgold's driver's license listed 2913 N. Washington Street as his residence. Ringgold's personal possessions were found in an upstairs bedroom. Ringgold provided the police with this address as his residence when he was arrested on July 13, 2010.⁵

RULE 61 MOTION AND COUNSEL'S MOTION TO WITHDRAW

8. On July 30, 2012, Defendant filed a *pro se* motion for postconviction relief along with a supporting memorandum of law. Thereafter, Defendant filed an amended memorandum of law. Before making a recommendation, the record was enlarged and Defendant's trial counsel was directed to submit an Affidavit responding to Defendant's

³ *Ringgold v. State*, 2012 WL 983199 (Del.).

⁴ *Ringgold v. State*, 2012 WL 983199, at * 1 (Del.).

⁵ *Ringgold v. State*, 2012 WL 983199, at *1 (Del.).

ineffective assistance of counsel claims. In turn, the State was also directed to, and did, file a response to the motion.⁶

9. After the submissions had been received by Defendant's trial counsel and the State, the court appointed counsel to assist Defendant on his Rule 61 motion. On July 16, 2013, counsel was appointed.

10. On November 4, 2013, assigned counsel filed a Motion to Withdraw as Postconviction Counsel pursuant to Superior Court Criminal Rule 61(e)(2).

11. Superior Court Criminal Rule 61(e)(2) provides that:

If counsel considers the movant's claim to be so lacking in merit that counsel cannot ethically advocate it, and counsel is not aware of any other substantial ground for relief available to the movant, counsel may move to withdraw. The motion shall explain the factual and legal basis for counsel's opinion and shall give notice that the movant may file a response to the motion within 30 days of service of the motion upon the movant.

12. In the motion to withdraw, Defendant's Rule 61 counsel represented that, after undertaking a thorough analysis of the Defendant's claims, counsel has determined that the claims are so lacking in merit that counsel cannot ethically advocate any of them.⁷ Counsel further represented that, following a thorough review of the record, counsel was not aware of any other substantial claim for relief available to Defendant Ringgold.⁸ Defendant's Rule 61 counsel represented to the court that there are no potential meritorious grounds on which to base a Rule 61 motion and has therefore sought to withdraw as counsel.⁹

⁶ See, Super.Ct.Crim.R. 61(g)(1)and (2).

⁷ See, Superior Court Docket No. 54- Defendant's Rule 61 counsel's Motion to Withdraw.

⁸ *Id.*

⁹ *Id.*

13. Defendant's Rule 61 counsel advised Defendant of his motion to withdraw and advised Defendant that he had the right to file a response thereto within 30 days, if Defendant desired to do so.¹⁰ Defendant filed a response to counsel's motion to withdraw on November 27, 2013.¹¹

14. In order to evaluate Defendant's Rule 61 motion, and to determine whether Defendant's Rule 61 counsel's motion to withdraw should be granted, the court should be satisfied that Rule 61 counsel made a conscientious examination of the record and the law for claims that could arguably support Defendant's Rule 61 motion. In addition, the court should conduct its own review of the record in order to determine whether Defendant's Rule 61 motion is devoid of any, at least, arguable postconviction claims.¹²

DEFENDANT'S RULE 61 MOTION IS WITHOUT MERIT

15. In his Rule 61 motion, Defendant raises ten claims. All of Defendant's claims are without merit. Each claim will be addressed below.

16. Defendant first claims that he was denied the right to confront his accuser at trial. Defendant contends that he was convicted at his bench trial without ever questioning the alleged confidential informant. In essence, Defendant wanted to confront the confidential informant whom provided information to law enforcement which then used that to obtain a search warrant at 2913 N. Washington Street, Wilmington, Delaware.

17. Defendant was charged with PDWBPP. This charge is not a crime that involves a victim or an aggrieved party. It was prosecuted through police witnesses alone. The issue in this case, whether Defendant Ringgold had constructive possession of the firearm

¹⁰ See, Superior Court Docket No. 55- Defendant's Rule 61 counsel's letter dated November 1, 2013.

¹¹ Superior Court Docket No. 56- Defendant's Response to Counsel's Motion to Withdraw.

¹² See, for example, *Roth v. State of Delaware*, 2013 WL 5918509, at *1 (Del. 2013)(discussing standard to be employed when deciding counsel's motion to withdraw on a defendant's direct appeal).

found in the basement of the residence at 2913 N. Washington Street, did not involve a victim or an aggrieved party. Detective Joseph Leary and Detective Robert Cunningham were the Wilmington Police Officers who charged Defendant Ringgold with this crime and both testified at trial.¹³ Both were available for cross-examination and both were cross-examined by defense counsel. No part of the evidence presented at trial relied on the testimony of a confidential informant.¹⁴

18. The confidential informant was not an “accuser” but merely a person whom provided information to law enforcement, which enabled them to secure a search warrant. The confidential informant was not an “accuser” in this case and Defendant had no right to confront him or her at trial. All of the State’s witnesses presented at trial were available for questioning and cross-examination.¹⁵

19. Defendant’s Rule 61 counsel concluded that after completing a comprehensive review of the trial transcript, previous filings in this case, and the applicable case law regarding post-conviction relief, counsel found no merit to this claim.¹⁶ The court agrees that this claim is without merit.

20. Defendant’s second and third claims are that his trial counsel was ineffective for failing to file a Motion to Suppress the search warrant for 2913 N. Washington Street and that there was an “illegal search and seizure” at this residence. In order to prevail on an ineffective assistance of counsel claim, Defendant must meet the two-pronged *Strickland* test by showing that: (1) counsel performed at a level “below an objective standard of

¹³ See, March 9, 2011 Trial Transcript.

¹⁴ State’s supplemental response to Defendant’s Rule 61 Motion dated April 15, 2013, at pg. 2; March 9, 2011 Trial Transcript; Motion to Withdraw as Counsel, at pgs. 2-3.

¹⁵ *Id.*

¹⁶ Motion to Withdraw as Counsel, at pg. 2-3.

reasonableness” and that, (2) the deficient performance prejudiced the defense.¹⁷ The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires him to show that there is a reasonable probability that, but for defense counsel’s unprofessional errors, the outcome of the proceedings would have been different.¹⁸

21. Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.¹⁹ There is a strong presumption that counsel’s conduct fell within a wide range of reasonable professional assistance.²⁰ Furthermore, an error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of conviction if the error had no effect on the judgment.²¹

22. Defendant’s trial counsel, in his Affidavit in response to Defendant’s Rule 61 motion, advised that he reviewed the search warrant with Defendant Ringgold and discussed how the law applied to his situation.²² Counsel explained to Defendant Ringgold, and Defendant Ringgold understood, that there was no valid suppression issue and that there was no valid issue with the search warrant and how the search was conducted.²³

23. Defendant’s trial counsel further represented that Defendant Ringgold’s defense was that he did not have any connection to the residence that was searched by law

¹⁷ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

¹⁸ *Id.*

¹⁹ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

²⁰ *Albury v. State*, 551 A.2d 53, 59 (Del. 1988); *Salih v. State*, 2008 WL 4762323, at *1 (Del. 2008).

²¹ *Strickland*, 466 U.S. at 687-88, 694.

²² Affidavit of Trial Counsel in response to Rule 61 Post-Conviction Relief Motion, at pg. 2.

²³ *Id.*

enforcement.²⁴ In fact, during pre-trial discussions, Defendant Ringgold steadfastly denied having any connection with the residence searched. Defendant Ringgold was adamant that he did not live at the searched residence and that anything found in the residence was not put there by him. Therefore, he had no standing to file a suppression motion even if there had been a valid issue.²⁵

24. Filing a suppression motion would have required Defendant to assert standing, that he had a reasonable expectation of privacy in the place searched or items seized. Defendant could not have conceded ownership so as to move forward with the suppression hearing if his defense was a steadfast denial of any connection to the residence and the items found therein.²⁶ The conduct of defense counsel does not appear to be deficient in any regard nor has Defendant shown any actual prejudice allegedly as a result thereof.

25. Defendant's Rule 61 counsel, following a thorough review of the record, also concluded that there was no valid issue that could have been raised as to the search warrant and that, in any event, Defendant did not have standing to raise any issue.²⁷ These claims are without merit.

26. In the fourth claim, Defendant Ringgold contends that his sentence was illegal as a Habitual Offender because he was never previously sentenced to a Level V program and because he was not present at the Habitual Offender hearing. This claim is without merit.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Affidavit of Trial Counsel in response to Rule 61 Post-Conviction Relief Motion, at pg. 2, State's response to Defendant's Rule 61 motion dated November 24, 2012; Motion to Withdraw, at pg. 3.

²⁷ Motion to Withdraw, at pg. 3-4.

27. First, the sentencing transcript reflects that Defendant was, in fact, present at the Habitual Offender hearing which took place at his sentencing.²⁸ Indeed, Defendant personally addressed the court at his sentencing.²⁹ Defendant was declared a Habitual Offender on June 3, 2011, prior to his formal sentencing by the court.³⁰

28. Second, Defendant Ringgold's contention that his sentence was illegal as a habitual offender because he was never sentenced to a Level V program is without any legal support. Based on Defendant Ringgold's prior criminal history, the court found the requisite felony convictions upon which to support the State's motion to declare Defendant a habitual offender. The mere fact that Defendant Ringgold had never been previously sentenced to a Level V program is not a legal defense to being declared a habitual offender. This claim is without merit.

29. In the fifth claim, Defendant Ringgold contends that the prosecution and detectives withheld evidence that the firearm was stolen until the first day of trial. The Delaware Supreme Court already addressed this issue on direct appeal.³¹ The Delaware Supreme Court held that under *Brady v. Maryland*, 373 U.S. 83 (1963), Defendant Ringgold claimed that the prosecution withheld exculpatory evidence, evidence that the gun seized from his residence on June 18, 2010 had been stolen from its prior owner on November 14, 2009. On plain error review, the Delaware Supreme Court concluded that such evidence was neither material nor favorable to the defense. Therefore, Defendant

²⁸ June 3, 2011 Sentencing Transcript, at pg. 2.

²⁹ June 3, 2011 Sentencing Transcript, at pgs. 7-8.

³⁰ June 3, 2011 Sentencing Transcript, at pg. 2.

³¹ *Ringgold v. State*, 2012 WL 983199, at * 2 (Del.).

Ringgold's claim to the contrary is without merit.³² This claim is procedurally barred as previously adjudicated and is also without merit.

30. In the sixth claim, Defendant Ringgold claims that he was denied his right to a speedy trial. The Delaware Supreme Court already held on Defendant Ringgold's direct appeal that a speedy trial claim was not implicated on this record.³³ The Delaware Supreme Court held that the length of time between the indictment and trial, less than eight months, was not presumptively prejudicial. The reason for the delay, awaiting the DNA report, was valid. There was no indication that Defendant Ringgold ever asserted his right to a speedy trial. Finally, there was no indication that Defendant Ringgold suffered any prejudice as a result of the delay.³⁴ This claim is procedurally barred as previously adjudicated and is also without merit.

31. In the seventh claim, Defendant Ringgold claims that he was coerced by his trial counsel to waive his right to a jury trial and proceed to a bench trial. The trial transcript of March 8, 2011 reveals to the contrary. Defendant Ringgold represented to the court that he had discussed his right to a trial by jury with his trial counsel, that he was satisfied with his counsel's representation, that it was his decision to waive his right to a trial by jury and that he was doing so because he believed it was in his best interest to do so.³⁵ The court found that, based on Defendant Ringgold's representations to the court, his waiver of the right to trial by jury was knowing, intelligent and voluntary.³⁶ Moreover, Defendant read and signed the Stipulation of Waiver of Jury.³⁷ Defendant has not

³² *Ringgold v. State*, 2012 WL 983199, at * 2 (Del.).

³³ *Ringgold v. State*, 2012 WL 983199, at * 2 (Del.).

³⁴ *Ringgold v. State*, 2012 WL 983199, at * 2 (Del.).

³⁵ March 8, 2011 Trial Transcript, at pgs. 3-5.

³⁶ March 8, 2011 Trial Transcript, at pgs. 4-5.

³⁷ Superior Court Docket No. 13- Stipulation of Waiver of Jury.

presented any clear, contrary evidence to call into question his prior representations made to the court prior to his trial. Defendant is bound by his previous representations. This claim is without merit.

32. In the eighth claim, Defendant Ringgold claims “denial of original plea.” Defendant complains: “Initial plea was 3 years Level 5 for firearm. Counsel informed me that he would ask for the 3 years again. Pre-sentence investigator’s recommendation was 3 years Level V after trial.”³⁸ It appears that Defendant Ringgold regrets his decision to reject the initial plea offer and faults his trial counsel for not forcing the State to re-offer the plea at a later date.

33. First, the State’s initial plea offer was for 8 years, suspended after 5 years at Level V (not 3 years as Defendant contends), which was the minimum/mandatory sentence for the PDWBPP charge at issue. As part of the plea, the State agreed not to pursue habitual sentencing.³⁹ Defendant rejected the plea offer.⁴⁰

34. Defendant’s trial counsel represented that this original plea was rejected by Defendant Ringgold.⁴¹ Defendant’s trial counsel further represented that he explained to Defendant Ringgold “many times” that the State could withdraw its offer at any time. Defendant Ringgold knew that he faced the possibility of being declared a habitual offender if convicted at trial. The original plea would have spared Defendant Ringgold being declared a habitual offender, but Defendant Ringgold although aware of this risk, rejected the plea offer.⁴²

³⁸ Superior Court Docket No. 31- Defendant’s Motion for Postconviction Relief, Ground Eight.

³⁹ See, Superior Court Docket No. 10- rejected Plea Agreement dated February 28, 2011.

⁴⁰ Superior Court Docket No. 10.

⁴¹ Affidavit of Trial Counsel in response to Rule 61 Motion, at pg. 3.

⁴² *Id.*

35. It appears that Defendant Ringgold is now blaming his trial counsel for the State's refusal to re-offer the rejected plea at a later date. A defendant, however, has no constitutional right or other legal entitlement to a plea offer.⁴³ Since the State does not have a duty to extend any plea offer to a defendant, this Defendant cannot complain that his counsel was ineffective because he could not convince the State to re-offer the rejected plea to Defendant at a later date. This claim is without merit.

36. In the ninth claim, Defendant Ringgold claims that the State lacked evidence to convict him of the charge. The Delaware Supreme Court on direct appeal already determined that a rational trier of fact, after considering the evidence in the light most favorable to the prosecution, could have found the essential elements of the crime beyond a reasonable doubt.⁴⁴ The Delaware Supreme Court held that, in this case based on the record, the Superior Court judge, acting as fact finder, properly determined on the basis of direct and circumstantial evidence that Ringgold, a person prohibited, had constructive possession of the gun because he had knowledge of the gun's location, an ability to put the gun under his control, and intent to possess or otherwise control the gun.⁴⁵ This claim is procedurally barred since it has already been adjudicated and is also without merit.

37. In the final claim, Defendant Ringgold contends that the detectives failed to inform the Magistrate Judge when applying for the search warrant that Defendant Ringgold was incarcerated due to unrelated circumstances. This claim goes to the testimony contained in the Affidavit of Probable Cause which resulted in the issuance of

⁴³ *Washington v. State*, 844 A.2d 293, 296 (Del. 2004).

⁴⁴ *Ringgold v. State*, 2012 WL 983199, at * 2 (Del.).

⁴⁵ *Ringgold v. State*, 2012 WL 983199, at * 2 (Del.).

the search warrant at 2913 N. Washington Street, Wilmington, Delaware and the execution thereof.

38. As previously addressed, Defendant raised several other claims contesting the issuance of the search warrant, and as his trial counsel explained, there did not appear to be any meritorious claims to raise contesting the issuance of the search warrant. Moreover, even if there had been any issue regarding the issuance of the search warrant, given Defendant's steadfast denial of any relationship to the residence or its contents, Defendant could not have contested the search warrant while still preserving his standing issue. This claim is without merit.

39. Defendant's claims that his counsel provided ineffective assistance are undermined by the record and fail to satisfy *Strickland*. The conduct of defense counsel does not appear to be deficient nor has Defendant shown any actual prejudice allegedly as a result thereof.

40. The court has reviewed the record carefully and has concluded that Defendant's Rule 61 motion is without merit and devoid of any other substantial claims for relief. The court is also satisfied that Defendant's Rule 61 counsel made a conscientious effort to examine the record and the law and has properly determined that Defendant does not have a meritorious claim to be raised in his Rule 61 motion.

41. Defendant's request for an evidentiary hearing is denied. The submissions of the parties and the evidentiary record were carefully, fully and thoroughly considered. Defendant's allegations were either reasonably discounted as not supported by the record, persuasively rebutted by defense counsel's Affidavit, or not material to a determination of Defendant's claims.

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied and Defendant's counsel's motion to withdraw should be granted.

IT IS SO RECOMMENDED.

Commissioner Lynne M. Parker

oc: Prothonotary
cc: Dean C. DelCollo, Esquire
cc: Mr. Jay M. Ringgold