

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

STATE OF DELAWARE)
)
)
) I.D. No. 1011021452
v.)
)
JOSE L. LARA)
)
)
Defendant)

Submitted: October 17, 2014
Decided: January 9, 2015

Upon Defendant's Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

This 9th day of January, 2015, upon consideration of Defendant's motion for postconviction relief, it appears to the Court that:

1. On June 16, 2014, Defendant, Jose Lara, pled guilty to one count of Burglary Second Degree and one count of Theft of a Firearm. Defendant's sentence was imposed immediately following his guilty plea.
2. Defendant did not file a direct appeal from his plea and sentence. Instead, on October 8, 2014, Defendant filed this motion for postconviction relief under Superior Court Criminal Rule 61. After review, it appears from the record that Defendant is not entitled to relief, and the motion is subject to summary dismissal.

3. The Delaware Supreme Court has held that “[a defendant]’s voluntary guilty plea constitutes a waiver of any alleged errors occurring before the entry of the plea. Absent clear and convincing evidence to the contrary, [a defendant] is bound by the answers on the Truth-in-Sentencing form and his . . . statements to the judge during the guilty plea colloquy.”¹

4. Defendant’s first ground for relief is ineffective assistance of counsel.² To support this claim, he writes only that “counsel was non-communicative, coercive, non-supportive, and showed minimal proactive demeanor towards the best interest of movant.” Defendant offered no facts to support this statement. On Defendant’s executed Truth-in-Sentencing form, Defendant acknowledged: that he was satisfied with his attorney’s representation, that his attorney fully advised him of his rights, and that his attorney had not threatened or forced him to enter the plea. Both the record

¹ *Purnell v. State*, 100 A.3d 1021, *3 (Del. 2014); *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997) (“With or without the witness oath, a defendant’s statements to the Superior Court during the guilty plea colloquy are presumed to be truthful.”).

² “In the context of a guilty plea challenge, *Strickland* requires a defendant to show that: (1) counsel’s representation fell below an objective standard of reasonableness; and (2) counsel’s actions were so prejudicial that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pleaded guilty and would have insisted on going to trial.” *Purnell v. State*, 100 A.3d 1021, *2 (Del. 2014) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

and Defendant's motion contain no facts that would suggest that Defense Counsel was ineffective.

5. Defendant's second ground for relief is "conflict of interest." To support this claim, Defendant claims that, because he speaks Spanish with limited English, he was unable to communicate effectively with his attorney. Defendant further alleges that he did not receive all court papers, that his counsel did not secure an interpreter, and that he unknowingly signed papers in which he agreed to be deported. A review of the record shows that Mr. Lara's claims are meritless.

6. The transcript of Mr. Lara's guilty plea and sentencing proceeding shows that Mr. Lara conferred with an interpreter throughout the proceeding and that Mr. Lara understood his trial rights.

7. The record shows that Mr. Lara knew that he may be deported upon his release from prison. Mr. Lara recognized, on his executed Truth-in-Sentencing form, that conviction of a criminal offense may result in deportation, exclusion from the United States, or denial of naturalization. Further, the transcript shows that Mr. Lara knew that he would be deported:

DEFENSE COUNSEL: . . . As a side note, your honor, my client is not legal in this country, he understands that after his release date here he probably will not be released, INS will pick him up and deport him.

THE COURT: Has INS already lodged a detainer, do we know?

MR. LARA: Yes.

THE INTERPRETER: Yes.

THE COURT: There's a detainer against you right now?

MR. LARA: Yes.

THE COURT: Is the predicate for deportation this charge, or is he not here legally at all?

DEFENSE COUNSEL: He's not here legally, but he wouldn't have been deported if it was not for this charge.

MR. LARA: I was in the process of my papers.

8. Mr. Lara's plea was knowing, voluntary, and intelligent. The transcript shows that Mr. Lara understood that he was admitting to his crimes and accepting responsibility for his actions. When the Court asked Mr. Lara how he picked out the particular home that he burglarized, Mr. Lara stated "I don't know," "we was high," and "I was not thinking." When asked whether the property had been returned to the victim, Mr. Lara, through his interpreter, stated "[e]verything that we took was taken from us."

9. For the reasons stated, Defendant has failed to allege any appropriate basis for relief. As such, Defendant's Motion for Postconviction Relief is

SUMMARILY DISMISSED.

IT IS SO ORDERED.

/s/ **Charles E. Butler**
Judge Charles E. Butler