

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cr. ID No. 2204004213
	)	
GERALD ROBERSON,	)	
	)	
Defendant.	)	

Submitted: March 1, 2024  
Decided: April 18, 2024

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT  
DEFENDANT’S RULE 61 MOTION FOR POSTCONVICTION RELIEF  
AND MOTION FOR MODIFICATION OF SENTENCE  
SHOULD BE DENIED  
AND  
DEFENDANT’S MOTION FOR DISCOVERY SHOULD BE DENIED**

Brianna Mills, Deputy Attorney General, Department of Justice, Wilmington,  
Delaware, Attorney for the State

Gerald Roberson, Howard R. Young Correctional Institution Wilmington,  
Delaware, *pro se*.

**PARKER, Commissioner**

This 18<sup>th</sup> day of April 2024, upon consideration of Defendant's Rule 61 Motion for Postconviction Relief and Motion for Modification of Sentence, it appears to the Court that:

**BACKGROUND, FACTS AND PROCEDURAL HISTORY**

1. Defendant Gerald Roberson was arrested on April 8, 2022, and on August 29, 2022, was indicted, on the charges of Carrying a Concealed Deadly Weapon ("CCDW"), Assault Third Degree, Breach of Release, Resisting Arrest, two counts of Offensive Touching of Law Enforcement Officer, and two counts of Endangering the Welfare of a Child.
2. The charges stemmed from a physical altercation that occurred on April 8, 2022, between Roberson and the mother of their shared child which resulted in his subsequent arrest. There was an active No Contact Order in place at the time of the incident. At the time of his arrest which was on the same day as the incident, April 8, 2022, the police found a concealed large black folding knife in the inside of Roberson's front waistband.
3. On March 27, 2023, Roberson pled guilty to two charges: CCDW and Assault Third Degree. The State dismissed all the remaining charges in the indictment as part of the plea.
4. The parties agreed that Roberson would be immediately sentenced following the entry of his plea and they mutually agreed to a sentence recommendation.

5. The Court followed the parties' joint sentence recommendation and sentenced Roberson to a total of three years at Level V, suspended after 9 months, followed by 18 months of Level III probation with GPS monitoring.
6. Roberson did not file a direct appeal.
7. On September 14, 2023, Roberson filed a motion for a sentence modification and a Rule 61 Motion for Postconviction Relief. Both motions allege similar grounds for relief.
8. Before ruling on the pending motions, the record was enlarged, and Roberson's trial counsel was directed to submit an Affidavit responding to the ineffective assistance of counsel claims. Thereafter, the State filed a response to the motions and Roberson was permitted to file a reply thereto.<sup>1</sup>
9. On March 8, 2024, Roberson filed a motion for a "full discovery packet" including, but not limited to, transcripts and body camera footage at the State's expense. Roberson claimed that he was entitled to the discovery sought due to violations of his constitutional rights and ineffective assistance of counsel.
10. For the reasons detailed below, Roberson waived the claims presented herein at the time he entered into his valid plea, the motions are also without merit, and his request for discovery at the State's expense is denied.

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<sup>1</sup> Super.Ct.Crim.R. 61(f) and 61(g).

## **THE PLEA WAS KNOWING, INTELLIGENT AND VOLUNTARY**

11. Roberson, in his Rule 61 motion and motion for sentence modification, contends that his plea was not properly entered into and should be set aside due to the ineffectiveness of his counsel and other irregularities, errors and deficiencies with the plea.

12. Roberson's present claims are directly at odds with the record.

13. A defendant is bound by his answers on the guilty plea form and by his testimony at the plea colloquy in the absence of clear and convincing evidence to the contrary.<sup>2</sup> In the subject action, the Plea Agreement and plea colloquy establish that Roberson entered into his guilty plea intelligently, knowingly and voluntarily.<sup>3</sup>

14. The record unequivocally established that Roberson entered into his plea voluntarily and that he was not operating under any misapprehension or mistake as to the terms of his plea agreement and/or his legal rights.

15. At the time of the plea, Roberson represented that he had reviewed the plea agreement and Truth-in-Sentencing Guilty Plea Form with his attorney, that he understood the terms of the plea agreement, that he understood the consequences of entering into the plea, that he was satisfied with his attorney's representation, and

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<sup>2</sup> *State v. Harden*, 1998 WL 735879, \*5 (Del.Super.); *State v. Stuart*, 2008 WL 486858, \*3 (Del.Super.).

<sup>3</sup> March 27, 2023 Plea and Sentence Transcript, at pgs. 11- 18; Plea Agreement filed March 27, 2023; Truth- in-Sentencing Guilty Plea Form filed March 27, 2023.

that he understood there was a joint sentence recommendation which was “heavily negotiated”.<sup>4</sup> Roberson’s representations to the Superior Court during the guilty plea colloquy are presumed to be truthful.<sup>5</sup>

16. At the plea hearing, Roberson further represented that he freely and voluntarily decided to plead guilty to the two charges, CCDW and Assault Third Degree, comprising the plea agreement, that nobody made any promises as to what his sentence would be, and that nobody forced or threatened him to enter into the plea.<sup>6</sup> At the plea hearing, Roberson admitted that he was guilty of the charges in the plea agreement.<sup>7</sup>

17. Roberson represented to the Court that he was satisfied with his counsel’s representation, that his counsel fully advised him of his rights, and that he understood the consequences of entering into his guilty plea.<sup>8</sup>

18. Roberson represented to the Court that he understood that by entering into his guilty plea he was waiving his right to challenge any defects occurring prior to the entry of his plea, even those of constitutional proportions.<sup>9</sup> He also represented that

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<sup>4</sup> March 27, 2023 Plea and Sentence Transcript, at pgs. 11- 18; Plea Agreement filed March 27, 2023; Truth- in-Sentencing Guilty Plea Form filed March 27, 2023.

<sup>5</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

<sup>6</sup> March 27, 2023 Plea and Sentence Transcript, at pgs. 11- 18; Plea Agreement filed March 27, 2023; Truth- in-Sentencing Guilty Plea Form filed March 27, 2023.

<sup>7</sup> March 27, 2023 Plea and Sentence Transcript, at pgs. 13-14.

<sup>8</sup> March 27, 2023 Plea and Sentence Transcript, at pgs. 11- 18; Plea Agreement filed March 27, 2023; Truth- in-Sentencing Guilty Plea Form filed March 27, 2023.

<sup>9</sup> March 27, 2023 Plea and Sentence Transcript, at pgs. 11- 18; Plea Agreement filed March 27, 2023; Truth- in-Sentencing Guilty Plea Form filed March 27, 2023.

he knew that he was waiving any right to test the strength of the State’s evidence, the right to hear and question witnesses, the right to present evidence in his own defense, and the right to appeal, if convicted.<sup>10</sup>

19. Following the plea colloquy with Roberson, the Court stated: “I’m satisfied that your plea is made knowingly, voluntarily and intelligently. I find that you certainly have an understanding of the nature of the charges and the consequences of the plea, and therefore, your plea is accepted.”<sup>11</sup>

20. As confirmed by the plea colloquy, Plea Agreement and Truth-in-Sentencing Guilty Plea Form, Roberson entered into his plea knowingly, intelligently and voluntarily. Any contention to the contrary is without merit.

### **ROBERSON’S MOTION FOR SENTENCE MODIFICATION**

21. In his motion for sentence modification, Roberson seeks to have the CCDW conviction dismissed, and his sentence reduced. Roberson now claims that his plea was not knowingly, intelligently and voluntarily entered due to his counsel’s ineffective assistance as well as other alleged deficiencies, errors and defects prior to the entry of the plea.

22. As discussed above, Roberson entered into his plea knowingly, intelligently and voluntarily and, therefore, there is no basis for any sentence modification.

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<sup>10</sup> March 27, 2023 Plea and Sentence Transcript, at pgs. 11- 18; Plea Agreement filed March 27, 2023; Truth- in-Sentencing Guilty Plea Form filed March 27, 2023.

<sup>11</sup> March 27, 2023 Plea and Sentence Transcript, at pg. 16.

23. The sentence imposed was mutually agreed to, and jointly recommended by the parties, at the time of the plea. At the plea colloquy, the parties advised the Court that the plea agreement was “heavily negotiated” and they jointly requested that the Court follow the parties’ sentence recommendation.<sup>12</sup>

24. The Court followed the parties’ joint sentence recommendation.

25. Roberson cannot now unilaterally seek to change the terms of his heavily negotiated valid plea. Roberson is bound by the terms of his plea agreement.

26. Roberson’s motion for a sentence modification is without merit and should be denied.

### **ROBERSON’S RULE 61 MOTION**

27. Roberson raises various claims in his Rule 61 motion for postconviction relief in which he seeks to have one or both of his convictions vacated.

28. Each of Roberson’s claims will be addressed in turn.

### **Ineffective Assistance of Counsel Claims**

29. Roberson claims that his plea was impaired due to the ineffective assistance of his trial counsel. Roberson complains that his counsel failed to investigate his case, failed to file a suppression motion, failed to file a motion for violation of his speedy trial rights, and failed to listen to his assertion of innocence.

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<sup>12</sup> March 27, 2023 Plea and Sentence Transcript, at pg. 16.

30. All of these claims were waived by Roberson at the time he accepted the plea. All of these claims are also without merit.

31. As previously noted, a defendant is bound by his answers on the guilty plea form and by his testimony at the plea colloquy in the absence of clear and convincing evidence to the contrary.<sup>13</sup> In the subject action, as discussed above, Roberson knowingly, voluntarily and intelligently entered into his plea agreement.

32. At the plea colloquy, Roberson represented that he correctly answered all the questions on the Truth-in-Sentencing Guilty Plea Form and that he understood all the rights he was waiving, including his constitutional rights.<sup>14</sup> Roberson understood he was waiving his rights to test the State's evidence and to raise any defenses that may exist.<sup>15</sup>

33. Moreover, Roberson expressly and specifically waived his speedy trial rights at the time he entered into his plea.

34. During the plea colloquy, the Court asked Roberson: "Do you understand that you do have the right to a speedy trial with the assistance of an attorney, and you're going to give up that right today by pleading guilty." To which Roberson responded: "Yes, ma'am."<sup>16</sup>

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<sup>13</sup> *State v. Harden*, 1998 WL 735879, \*5 (Del.Super.); *State v. Stuart*, 2008 WL 4868658, \*3 (Del.Super. 2008).

<sup>14</sup> March 27, 2023 Plea and Sentence Transcript, at pgs. 11, 15; Truth-in-Sentencing Guilty Plea Form filed March 27, 2023.

<sup>15</sup> *Id.*

<sup>16</sup> March 27, 2023 Plea and Sentencing Transcript, pgs. 12-13.



35. Roberson has not presented any clear, contrary evidence to call into question his testimony at the plea colloquy, Plea Agreement or answers on the Truth-in-Sentencing Guilty Plea Form. Roberson's valid guilty plea waived his right to challenge any alleged errors, deficiencies or defects occurring prior to the entry of his plea, even those of constitutional proportions.<sup>17</sup>

36. Roberson waived any suppression or speedy trial issue that may have issued, to the extent any such issue existed, at the time he entered into his plea.<sup>18</sup> He also waived his right to claim ineffective assistance of counsel due to counsel's investigation of the case and for counsel allegedly not listening to his claim of innocence.<sup>19</sup>

37. All of Roberson's ineffective assistance of counsel claims were waived at the time Roberson validly entered into his plea.

38. In addition to having waived these claims, they are also without merit.

39. In order to prevail on an ineffective assistance of counsel claim, the defendant must meet the two-pronged *Strickland* test by showing that: (1) counsel performed at a level "below an objective standard of reasonableness" and that, (2)

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<sup>17</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Modjica v. State*, 2009 WL 2426675 (Del. 2009); *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2004).

<sup>18</sup> See, *Mills v. State*, 2016 WL 97494, at \*3 (Del.).

<sup>19</sup> See, *Mills v. State*, 2016 WL 97494, at \*3 (Del.); *Day v. State*, 2011 WL 3617797 (Del.) (claim that counsel was ineffective for failing to file a suppression motion was waived when defendant voluntarily entered his guilty plea, since voluntary guilty plea waives any claims of error occurring prior to the entry of the plea); *Hickman v. State*, 1994 WL 590495 (Del.).

the deficient performance prejudiced the defense.<sup>20</sup> 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.<sup>21</sup>

40. In the context of a plea challenge, it is not sufficient for the defendant to simply claim that his counsel was deficient. The defendant must also establish that counsel's actions were so prejudicial that there was a reasonable probability that, but for counsel's deficiencies, the defendant would not have taken a plea but would have insisted on going to trial.<sup>22</sup> The burden of proving ineffective assistance of counsel is on the defendant.<sup>23</sup> Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.<sup>24</sup>

41. The United States Supreme Court has reiterated the high bar that must be surmounted to prevail on an ineffective assistance of counsel claim.<sup>25</sup> The United States Supreme Court cautioned that in reviewing ineffective assistance of counsel claims in the context of a plea bargain, the court must be mindful of the fact that

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<sup>20</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

<sup>21</sup> *Id.* at 687-88, 694.

<sup>22</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997); *Premo v. Moore*, 131 S.Ct. 733, 739-744 (2011).

<sup>23</sup> *Oliver v. State*, 2001 WL 1751246 (Del.).

<sup>24</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

<sup>25</sup> *Premo v. Moore*, 131 S.Ct. 733, 739-744 (2011).

“[p]lea bargains are the result of complex negotiations suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks.”<sup>26</sup>

42. In the subject case, Roberson does not provide any support for his allegations of speedy trial and/or suppression of evidence issues. Conclusory, unsupported and unsubstantiated allegations are insufficient to establish a claim of ineffective assistance of counsel.<sup>27</sup>

43. Roberson’s defense counsel, in his Affidavit in response to Roberson’s Rule 61 motion, advises that he did not file a motion to suppress evidence in the case because he did not see any basis to do so.<sup>28</sup>

44. An ineffective assistance of counsel claim based on the failure to object to evidence is without merit if trial counsel lacked a legal or factual basis to object to the evidence.<sup>29</sup>

45. As to Roberson’s claim that his counsel did not listen to his assertion of innocence, trial counsel responded that he did, in fact, listen to Roberson’s claim of innocence. Roberson’s defense counsel advised that he listened to everything Roberson had to say before Roberson made the decision to take the plea.<sup>30</sup>

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<sup>26</sup> *Id.*, at pg. 741.

<sup>27</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990); *State v. Brown*, 2004 WL 74506, \*2 (Del.Super. 2004) (conclusory and unsubstantiated allegations of unprofessional conduct are insufficient to support a motion for postconviction relief).

<sup>28</sup> D.I. 14- Affidavit of Defense Counsel, at pg. 1.

<sup>29</sup> *State v. Exum*, 2002 WL 100576, at \*2 (Del.Super.), *affirmed*, 2002 WL 2017230, at \*1 (Del.).

<sup>30</sup> D.I. 14- Affidavit of Defense Counsel, at pg. 2.

46. At the plea colloquy, Roberson represented to the Court that he was entering into his plea freely and voluntarily, that he was guilty of the offenses, that he had an opportunity to discuss the matter fully with his counsel, that he knew the consequences of entering into his plea, that he knew he was waiving his constitutional trial rights including his speedy trial rights, and that he was satisfied with his counsel's representation.<sup>31</sup>

47. Roberson failed to make any concrete allegation of deficient conduct, let alone, deficient conduct that resulted in actual prejudice. Roberson's unsubstantiated ineffective assistance of counsel claims were waived at the time of the plea and are without merit.

### **Illegal Search and Seizure Claim**

48. In addition to Roberson's claim that his counsel was ineffective for failing to file a suppression motion, Roberson claims that the search and seizure by law enforcement was somehow unlawful and/or that there was a lack of probable cause for his arrest.

49. As discussed above, Roberson waived these claims at the time of the plea. He could have elected to proceed to trial thereby preserving the right to test the State's case and preserving the right to raise any defenses that may have existed. He chose instead to waive those rights and accept the plea offer.

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<sup>31</sup> March 27, 2023 Plea and Sentencing Transcript, at pg. 11-15.

50. Roberson does not substantiate his claims. Unsupported, unsubstantiated assertions are insufficient to support a postconviction claim. Moreover, Roberson's trial counsel did not believe there was any basis for any such claims.<sup>32</sup>

51. These claims were waived at the time of the plea and are also without merit.

**Claim of Unfulfilled Plea Agreement/Mistakes on Plea**

52. Roberson now claims that he was mistaken as to the terms of the plea agreement and that he thought he was pleading guilty to only one charge, CCDW. He claims that he was also mistaken as to his sentence and was under the belief that he would be sentenced to time-served.

53. Roberson's present contention is directly at odds with the record, and it is without merit.

54. Roberson's statements to the Superior Court during the guilty plea colloquy are presumed to be truthful.<sup>33</sup>

55. At the plea colloquy, defense counsel stated that Roberson agreed to plead guilty to two charges: CCDW and Assault Third Degree.<sup>34</sup> Roberson then advised the Court that his counsel correctly stated the terms of the plea agreement.<sup>35</sup>

56. Roberson specifically and expressly represented to the Court that he wished to plead guilty to one count of CCDW and one count of Assault Third Degree. He

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<sup>32</sup> D.I. 14- Affidavit of Defense Counsel, at pg. 1.

<sup>33</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

<sup>34</sup> March 27, 2023 Plea and Sentence Transcript, at pg. 10.

<sup>35</sup> March 27, 2023 Plea and Sentence Transcript, at pg. 12.

further specifically and expressly represented to the Court that the charges were read or fully explained to him and that he wished to plead guilty to those two charges.<sup>36</sup>

57. Roberson represented to the Court that he understood he could be sentenced to up to three years of prison time. He represented that no one forced or threatened him into entering the plea and that no one made any promises as to what his sentence would be.<sup>37</sup> The Court then followed the “heavily-negotiated” joint sentence recommendation of the parties.<sup>38</sup>

58. Moreover, the Plea Agreement that Roberson signed expressly set forth the terms of the Plea Agreement to the two charges and to the jointly recommended sentence.<sup>39</sup>

59. The record unequivocally established that Roberson agreed to, and did, plead to two charges, that he admitted his guilt to both of those charges, and that he received the heavily negotiated, jointly recommended sentence.

60. Roberson’s plea was not unfulfilled in any regard. This claim is without merit.

### **Claim of Impairment at Time of Plea**

61. Roberson appears to contend in his motion for modification of sentence, and in his later-filed discovery motion, that he was somehow impaired at the time of his plea.

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<sup>36</sup> March 27, 2023 Plea and Sentence Transcript, at pgs. 13-14.

<sup>37</sup> March 27, 2023 Plea and Sentence Transcript, at pgs. 14-15.

<sup>38</sup> March 27, 2023 Plea and Sentence Transcript, at pgs. 16-19.

<sup>39</sup> D.I. 6- Plea Agreement filed March 27, 2023.

62. Roberson's representations at the time of the plea belie his present contention. Roberson represented to the Court that he understood the plea, and that he had not taken any drugs, alcohol or medicine that would prevent him from understanding the plea.<sup>40</sup>

63. Roberson's trial counsel likewise asserts that he never had any indication that Roberson was impaired.<sup>41</sup>

64. A review of the plea colloquy reflects that Roberson appeared fully oriented, properly responded to the questions and asked appropriate questions, and presented with a clear thought process. He did not show any signs of an impaired ability to understand and enter into the plea.

65. Only after Roberson coherently and appropriately answered the Court's questions, did the Court conclude: "I'm satisfied that your plea is made knowingly, voluntarily and intelligently. I find that you certainly have an understanding of the nature of the charges and the consequences of the plea, and, therefore, your plea is accepted."<sup>42</sup>

66. Roberson's present claim that he was somehow impaired at the time of his plea is not supported by the record, is at odds with his representations at the time of the plea, and is without merit.

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<sup>40</sup> March 27, 2023 Plea and Sentencing Transcript, at pg. 12.

<sup>41</sup> D.I. 14- Affidavit of Defense Counsel, at pg. 2.

<sup>42</sup> March 27, 2023 Plea and Sentencing Transcript, at pg. 16.

### **Roberson's Request for Discovery is Denied**

67. On March 8, 2024, Roberson filed a motion seeking a “full discovery packet” including, but not limited to, transcripts and the arresting officer’s body camera footage, at the State’s expense. Roberson claims he is entitled to the discovery sought due to the ineffective assistance of counsel and violations of his constitutional rights.

68. While an indigent defendant is entitled to a free transcript in order to pursue a direct appeal, there is no absolute right, absent a showing of good cause, for free transcripts on collateral review.<sup>43</sup>

69. Having found that all the claims presented in Roberson’s postconviction motions were waived at the time of the plea and were also without merit, there is no need for the materials requested. These materials will not aid in the presentation or consideration of Roberson’s pending motions.

70. Roberson’s motion for a “full discovery packet” is hereby denied.

### **CONCLUSION**

71. Following a careful review of the record, and for the reasons discussed above, the Court concludes that the claims raised in Roberson’s Rule 61 Motion for Postconviction Relief and Motion for Modification of Sentence were waived at the time he entered into his valid plea and are also without merit. Roberson’s pending

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<sup>43</sup> *In re Williams*, 2014 WL 1365826,\* n.4 (Del.) .



postconviction motions should be **DENIED**. Roberson's motion for a "full discovery packet" should also be **DENIED**.

**IT IS SO RECOMMENDED.**

/s/ Lynne M. Parker  
Commissioner Lynne M. Parker

cc. Prothonotary  
James O. Turner, Jr., Esquire