

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

|                    |   |                       |
|--------------------|---|-----------------------|
| STATE OF DELAWARE, | ) |                       |
|                    | ) |                       |
| Plaintiff,         | ) |                       |
|                    | ) |                       |
| v.                 | ) | Cr. ID No. 2010012555 |
|                    | ) |                       |
| BRYON WILMER,      | ) |                       |
|                    | ) |                       |
| Defendant.         | ) |                       |

Submitted: July 7, 2025  
Decided: October 29, 2025

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT  
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF  
AND MOTION FOR MODIFICATION OF SENTENCE  
SHOULD BE DENIED  
AND  
RULE 61 COUNSEL’S MOTION TO WITHDRAW SHOULD BE  
GRANTED.**

Nicoli T. Goncalves, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for the State.

Benjamin S. Gifford IV, Esquire, Rule 61 Attorney for Defendant Bryon Wilmer

PARKER, Commissioner

Defendant Bryon Wilmer’s Rule 61 motion for postconviction relief and Motion for Modification of Sentence should be denied for the reasons set forth below.

### **BACKGROUND, FACTS AND PROCEDURAL HISTORY**

1. On July 19, 2021, Wilmer was indicted on one count each of Possession of a Firearm by a Person Prohibited (“PFBPP”), Possession of Ammunition by a Person Prohibited (“PABPP”), Carrying a Concealed Deadly Weapon (“CCDW”), Receiving a Stolen Firearm and Resisting Arrest.<sup>1</sup>
2. The charges stemmed from an incident that occurred on October 26, 2020. Wilmington Police Officers were patrolling in an unmarked police vehicle when they observed a Jeep Grand Cherokee driving at a high rate of speed, running several stop signs. As the officers pulled up behind the vehicle, the four occupants of the Jeep Grand Cherokee exited the vehicle and fled on foot.<sup>2</sup>
3. The police captured three of the four occupants.<sup>3</sup> The driver of the vehicle, Dahmere White, was caught. As White was running from the police, he dropped his handgun, which the police recovered.<sup>4</sup> The occupant who was sitting in the rear passenger seat, Amit Warren, was also captured. Warren’s gun was found on him at the time of arrest.<sup>5</sup>

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<sup>1</sup> D.I. 4 (Indictment).

<sup>2</sup> September 7, 2022 Trial Transcript, at pgs. 20-21, 37-39, 91-94, 111-113.

<sup>3</sup> September 7, 2022 Trial Transcript, at pgs. 21, 42, 48-49.

<sup>4</sup> September 7, 2022 Trial Transcript, at pgs. 23, 113-114.

<sup>5</sup> September 7, 2022 Trial Transcript, at pgs. 22-23, 48-49, 96-97.

4. The subject defendant, Wilmer, was sitting in the back seat on the driver's side of the vehicle. He fled but was captured. A gun was found on the floor of the vehicle directly in front of where he had been sitting. The gun was a Taurus model G2S firearm, and it was found loaded with 6 live rounds of ammunition.<sup>6</sup>

5. The fourth occupant, the occupant sitting in the front passenger side, was never caught.<sup>7</sup>

6. During the pre-trial conference held on June 27, 2022, the State dismissed the charges of CCDW and Receiving a Stolen Firearm.<sup>8</sup> Trial was scheduled for September 6, 2022, on the remaining charges of PFBPP, PABPP and Resisting Arrest.<sup>9</sup>

7. Because the gun that Wilmer was charged with possessing was found directly in front of where he had been sitting, and because the other two occupants of the vehicle that had been captured were caught with their own guns, the State did not initially believe it needed to conduct DNA testing on the gun.<sup>10</sup>

8. The State later changed its mind, and on August 2, 2022, 35-days before the trial started, the State sought DNA testing on the gun. The DNA test results were

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<sup>6</sup> September 7, 2022 Trial Transcript, at pgs. 40-45, 81-82, 94-98.

<sup>7</sup> September 7, 2022 Trial Transcript, at pg. 21.

<sup>8</sup> D.I. 13 (Pre-trial Conference).

<sup>9</sup> D.I. 14 (Pre-trial Conference).

<sup>10</sup> September 7, 2022 Trial Transcript, at pgs. 22, 45-47, 73, 97-98.

not available and were not used at trial. Due to the delay, no comparisons could be made at trial linking Wilmer's DNA to the gun.<sup>11</sup>

9. The parties conducted jury selection on September 6, 2022, and trial began the following day, September 7, 2022.<sup>12</sup> The parties stipulated at trial that Wilmer was a person prohibited from possessing a firearm and ammunition at the time of the incident at issue.<sup>13</sup>

10. Wilmer's trial counsel's defense theme at trial was that there was no forensic evidence linking Wilmer to the gun.<sup>14</sup> Counsel argued that the gun could have been a second gun of one of the two occupants captured, or it could have been the gun of the occupant (sitting in the front passenger seat) who had not been captured.<sup>15</sup> Wilmer's trial counsel argued that the lack of any physical evidence, DNA or fingerprints, linking Wilmer to the gun should raise doubt as to whether Wilmer knowingly possessed the firearm and ammunition at issue.<sup>16</sup> The jury was not able to reach a unanimous verdict on these two counts.

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<sup>11</sup> September 7, 2022 Trial Transcript, at pgs. 67-69.

<sup>12</sup> D.I. 19 (Jury Selection and Jury Trial).

<sup>13</sup> D.I. 20 (Stipulation).

<sup>14</sup> See, September 7, 2022 Trial Transcript, at pgs. 68-69, 119-120, 138, 146, 152.

<sup>15</sup> September 7, 2022 Trial Transcript, at pgs. 138, 146, 152.

<sup>16</sup> September 7, 2022 Trial Transcript, at pgs. 146, 152.

11. On September 8, 2022, the jury returned a verdict of guilty on the misdemeanor charge of Resisting Arrest.<sup>17</sup> The jury could not reach a verdict on the PFBPP and PABPP charges, and a mistrial was declared on those two counts.<sup>18</sup>

12. On September 8, 2022, following the jury verdict, the State provided Wilmer's trial counsel with the DNA test results.<sup>19</sup>

13. The DNA Lab Report revealed that Wilmer was a potential DNA contributor on the grip of the firearm at issue with a probability of 1 in 3, and that Wilmer was a potential DNA contributor on the trigger of the firearm with a probability of **1 in 7 trillion**.<sup>20</sup> Since there are only about 8 billion people on this planet, the probability of finding an unrelated individual whose DNA profile matched Wilmer's on the trigger of the firearm is so infinitesimal it is virtually nonexistent. Thus, the forensic evidence that the State lacked at Wilmer's trial linking Wilmer to the gun at issue, the State now possessed.

14. The State advised that it would be retrying Wilmer on the two open charges of PFBPP and PABPP. Upon learning of State's intent to retry the two open charges, Wilmer expressed his desire to no longer be represented by his trial counsel, Brian Chapman, Esquire. The Court granted Mr. Chapman's motion to withdraw as counsel.<sup>21</sup> Gregory Johnson, Esquire, assumed the representation of Wilmer.

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<sup>17</sup> D.I. 19.

<sup>18</sup> D.I. 19.

<sup>19</sup> D.I. 54- Affidavit of Trial Counsel.

<sup>20</sup> D.I. 54- Affidavit of Trial Counsel, Exhibit A (DNA Lab Report).

<sup>21</sup> D.I. 25 (Order granting Motion to Withdraw as Counsel).

15. Prior to Wilmer's first trial, the State had not made any plea offer to Wilmer.<sup>22</sup> Prior to the retrial, the State offered Wilmer a plea, which he accepted. On October 2, 2023, Wilmer entered into a plea agreement that resolved the remaining charges of PFBPP and PABPP. The plea agreement also resolved an outstanding violation of probation relating to a prior conviction of Assault First Degree.<sup>23</sup> Wilmer pled guilty to one count of CCDW and to the violation of probation relating to the Assault First Degree conviction.<sup>24</sup> The State agreed to dismiss all the remaining open charges on this case.

16. As part of the plea, the parties agreed to immediate sentencing and that Wilmer would be sentenced as a habitual offender. The parties agreed to jointly recommend that Wilmer be sentenced on the CCDW conviction to 25 years at Level V, suspended after 8 years, for 12 months at Level IV, suspended after 6 months for 12 months at Level III. The parties further agreed to jointly recommend that Wilmer be sentenced on the VOP Assault First to 5 years at Level V suspended for 12 months at Level III.<sup>25</sup>

17. On October 5, 2023, Wilmer's plea colloquy was held. The State's motion to declare Wilmer as a habitual offender was granted and immediately following the

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<sup>22</sup> D.I. 54- Affidavit of Trial Counsel.

<sup>23</sup> D.I. 28 (Plea Agreement).

<sup>24</sup> *State v. Wilmer*, Criminal Action No. 1805014751.

<sup>25</sup> D.I. 28 (Plea Agreement).

plea, the Court sentenced Wilmer in accordance with the parties' joint recommendation.<sup>26</sup>

18. Had Wilmer not accepted the plea to the charge of CCDW (Felony D), and proceeded to the retrial on his outstanding charges of PFBPP (Felony C), and PABPP (Felony D), if convicted and sentenced as a habitual offender, Wilmer would be facing a minimum-mandatory sentence of 15 years of incarceration on the PFBPP charge alone, plus additional prison time on the PABPP charge.

19. By accepting the plea, the parties agreed to mutually recommend an 8-year prison term, the minimum-mandatory for the conviction of CCDW as a habitual offender. The 8-year prison term Wilmer received by taking the plea was far less than the minimum-mandatory term of 15-years Wilmer would have (at the minimum) received had he proceeded to the re-trial and was convicted.

20. Wilmer's plea represented a rational choice given the pending charges, the evidence against him, the fact that the State now had the missing link- the DNA test results- that it lacked at the first trial, and the possible sentences he was facing if convicted at trial.

21. On November 16, 2023, Wilmer was sentenced on his Resisting Arrest conviction. The parties agreed to recommend only a \$25.00 fine since Wilmer was already serving a substantial period of incarceration resulting from his guilty plea.

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<sup>26</sup> D.I. 28 (Plea Colloquy and Habitual Offender Motion/Order); D.I. 29 (Plea Sentencing Order).

The Court accepted the parties' joint recommendation and sentenced Wilmer to a \$25.00 fine for this conviction.<sup>27</sup>

22. Wilmer did not file a direct appeal of his conviction or sentence.

23. On January 2, 2024, Wilmer filed a Motion for Sentence Reduction/Modification.<sup>28</sup> On March 20, 2024, the Court denied Wilmer's motion for a sentence reduction/modification.<sup>29</sup>

24. On April 3, 2024, Wilmer filed a Rule 61 motion for postconviction relief<sup>30</sup> and on April 2, 2025, Wilmer filed another Motion for Modification of Sentence.<sup>31</sup>

25. For the reasons discussed below, Wilmer's Rule 61 motion and second motion for modification of sentence should be denied.

### **WILMER'S SECOND MOTION FOR SENTENCE MODIFICATION**

26. On April 2, 2025, Wilmer filed a second Motion for Modification of Sentence.

27. In his pending motion for sentence modification, Wilmer seeks to have the Level IV portion of his sentence removed and replaced by Level III probation to run concurrently with the Level III probation already imposed.

28. The sentence imposed was mutually agreed to and jointly recommended by the parties, at the time of the plea. The Court followed the parties' joint sentence recommendation.

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<sup>27</sup> D.I. 31 (Resisting Arrest Sentencing Order).

<sup>28</sup> D.I. 32 (Motion for Sentence Modification).

<sup>29</sup> D.I. 33 (Order denying Motion for Sentence Modification).

<sup>30</sup> D.I. 34 (Rule 61 Motion).

<sup>31</sup> D.I. 50 (Second Motion for Modification of Sentence).

29. Wilmer now seeks to unilaterally change the terms of the mutually agreed upon sentence.

30. Wilmer cannot contractually agree to a mutual joint sentence recommendation as part of a plea agreement and then after the plea deal is completed seek to unilaterally change the terms of that agreement. Wilmer is contractually obligated and bound by the terms of his plea agreement.

31. The sentence imposed was agreed to by the parties and jointly recommended to the Court. The Court found the mutually recommended sentence to be fair and reasonable under the facts and circumstances of this case and imposed the recommended sentence. No extraordinary circumstance exists that would warrant a unilateral deviation from the mutually agreed upon sentence.

32. Wilmer's second motion for a sentence modification is without merit and should be denied.

**RULE 61 MOTION AND  
RULE 61 COUNSEL'S MOTION TO WITHDRAW**

33. On April 3, 2024, Wilmer filed a *pro se* Rule 61 motion for postconviction relief and a motion for the appointment of counsel.<sup>32</sup> In Wilmer's *pro se* Rule 61

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<sup>32</sup> D.I. 34 (Rule 61 Motion) & 35 (Motion for Appointment of Counsel).

motion, he raised three ineffective assistance of counsel claims. The Superior Court granted Wilmer's motion for the appointment of counsel.<sup>33</sup>

34. On August 20, 2024, counsel was appointed to represent Wilmer in his Rule 61 motion.<sup>34</sup>

35. On February 26, 2025, assigned counsel filed a Motion to Withdraw as Postconviction Counsel pursuant to Superior Court Criminal Rule 61(e)(7).<sup>35</sup> Superior Court Criminal Rule 61(e)(7) 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.

36. In the motion to withdraw, Wilmer's Rule 61 counsel represented that the three ineffective assistance of counsel claims raised by Wilmer in his *pro se* motion are without merit and that counsel cannot ethically advocate for any postconviction claims on behalf of Wilmer.<sup>36</sup>

37. Before ruling on Wilmer's Rule 61 motion and Rule 61 counsel's motion to withdraw, the record was enlarged, and both attorneys that had represented Wilmer

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<sup>33</sup> D.I. 37 (Order appointing counsel).

<sup>34</sup> D.I. 40.

<sup>35</sup> D.I. 47-49 (Motion to Withdraw, Letter and Appendix).

<sup>36</sup> D.I. 48- Motion to Withdraw, at pg. 14.

were directed to submit Affidavits responding to Wilmer's ineffective assistance of counsel claims. Thereafter, the State was directed to, and did, file a response to Wilmer's Rule 61 motion. Finally, Wilmer filed a reply thereto.<sup>37</sup>

38. In order to evaluate Wilmer's Rule 61 motion and to determine whether his 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 Wilmer's Rule 61 motion. In addition, the Court should conduct its own review of the record to determine whether Wilmer's Rule 61 motion is without merit.<sup>38</sup>

39. For the reasons set forth below, the three ineffective assistance of counsel claims raised in Wilmer's Rule 61 motion were waived upon the entry of the plea. They are also without merit.

### **Wilmer's Claims Were Waived at the Time of the Plea**

40. Wilmer asserted three ineffective assistance of counsel claims in his Rule 61 motion. Wilmer claims that his trial counsel was ineffective: (1) for failing to use the DNA report at his first trial; (2) for failing to file pre-trial motions; and (3) for failing to communicate and failing to have a viable trial strategy at his first trial.

41. Wilmer waived the three claims presented herein at the time he entered into his plea. Wilmer's valid guilty plea waived his right to challenge any alleged errors,

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<sup>37</sup> See, Super.Ct.Crim.R. 61(f) and 61(g).

<sup>38</sup> *Matos v. State*, 2015 WL 5719694, \*2 (Del.).

deficiencies or defects occurring prior to the entry of the plea, including any ineffective assistance of counsel claims.<sup>39</sup>

42. Wilmer could have elected to proceed to the retrial of his outstanding charges thereby preserving the right to test the State's case and to challenge his counsel's alleged ineffectiveness at his first trial, but he chose instead to waive those rights and to accept the plea offer.

43. It is important to note that Wilmer derived a significant benefit from pleading guilty to a charge of CCDW (Felony D), rather than continuing to the re-trial of his two open charges of PFBPP (Felony C) and PABPP (Felony D). Wilmer was eligible to be sentenced and was sentenced as a habitual offender. If he was convicted at the re-trial and sentenced as a habitual offender on the PFBPP charge, he would be facing a prison sentence of at least 15 years for that charge alone rather than the 8-year prison sentence he received as a result of having taken the plea to CCDW.

44. The State's case against Wilmer on the re-trial was significantly stronger now that it had the DNA test results which conclusively linked Wilmer to the gun at issue. Wilmer's plea represented a rational choice given the pending charges,

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<sup>39</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); *Cooper v. State*, 2008 WL 2410404, \*3 (Del. 2008).

the evidence against him, and the possible sentences he was facing if convicted at trial.

45. All three of Wilmer's ineffective assistance of counsel claims involve allegations of deficiencies, shortcomings and errors prior to the entry of the plea. All of these claims were waived at the time Wilmer validly entered into his plea.

### **Wilmer's Claims Are Without Merit**

46. In addition to having waived all three of his ineffective assistance of counsel claims at the time of his plea, all three of Wilmer's claims are also without merit.

47. 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) the deficient performance prejudiced the defense.<sup>40</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>41</sup>

37. 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

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<sup>40</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

<sup>41</sup> *Id.* at 687-88, 694.

for counsel's deficiencies, the defendant would not have taken a plea but would have insisted on going to trial.<sup>42</sup> The burden of proving ineffective assistance of counsel is on the defendant.<sup>43</sup> Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.<sup>44</sup>

48. Each of Wilmer's claims will be addressed in turn.

**Claim One: Counsel Ineffective for Failing to Use DNA Report at Trial**

49. Wilmer claims that his counsel was somehow ineffective in failing to use the DNA report at his first trial. In his Rule 61 motion, Wilmer claims that if the DNA report had been used at trial, he would have been found not guilty.<sup>45</sup> In his reply, Wilmer claims that the fact that the DNA report revealed that his DNA was on the firearm at issue is "irrelevant and beside the point," because it could have been exculpatory.<sup>46</sup>

50. First, this claim was waived at the time Wilmer entered into his plea thereby resolving these outstanding charges.

51. Second, trial counsel could not have used the DNA report at trial because it was not provided to him by the State until the day after the trial. It was provided to him on September 8, 2022, following the jury verdict finding Wilmer guilty on the

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<sup>42</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>43</sup> *Oliver v. State*, 2001 WL 1751246 (Del.).

<sup>44</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

<sup>45</sup> D.I. 34- Wilmer's Rule 61 Motion- Ground One.

<sup>46</sup> D.I. 34- Wilmer's Rule 61 Motion- Ground One; D.I. 57- Wilmer's Reply in Support of Rule 61 motion, at pgs. 3-4.

resisting arrest charge, and a mistrial declared on the other two charges of PFBPP and PABPP when the jury could not reach a unanimous verdict on those charges.<sup>47</sup>

52. Third, it was because the DNA test results were not available for use at trial, that trial counsel was able to create doubt as to whether Wilmer was linked to the firearm at issue. The DNA test results provided the link that the State was missing at trial. Wilmer's contention that he would have been found not guilty if the DNA test results were used at his trial is nonsensical. The DNA test results greatly strengthened the State's case against him.

53. The DNA report conclusively establishes that Wilmer's DNA was present on the firearm at issue. This fact is inculpatory for Wilmer and would have greatly strengthened the State's case against him. The DNA report was not in any way helpful to Wilmer's defense.

54. Wilmer should be thankful that the DNA report was not available for use at his first trial. It appears that Wilmer would have had no viable defense if the DNA report was available for use at trial. The gun was found right in front of where he was sitting and the DNA results conclusively linked him to the gun. There is no merit to this claim.

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<sup>47</sup> D.I. 54- Affidavit of Trial Counsel.

### **Claim Two: Counsel Ineffective for Not Filing Pre-trial Motions**

55. Wilmer claimed that counsel was ineffective for failing to file pre-trial motions on Wilmer's behalf, particularly motions to reduce Wilmer's bail and a motion to suppress.

56. First, this claim was waived at the time he accepted his plea.<sup>48</sup>

57. Second, this claim is without merit. Trial counsel, in his Affidavit, represents that he did not file a motion for reduction in bail or a motion to suppress, because he did not believe there was any lawful basis to do so.<sup>49</sup>

58. As to Wilmer's bail, it was addressed at his arraignment in Superior Court, and due to the nature of the charges with there being a firearm charge and a cash bail presumption, and due to Wilmer's prior criminal history, Wilmer was facing considerable minimum mandatory jail time if convicted. Trial counsel did not believe there was any likelihood that his bail would be reduced in any way.<sup>50</sup> Given the charges and Wilmer's criminal history it was unlikely a motion to modify bail would be granted.

59. As to a motion to suppress, Trial Counsel explains that he thoroughly reviewed the discovery in the case and did not identify any basis for a motion to suppress. Wilmer was a passenger in a vehicle that was lawfully stopped. He fled

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<sup>48</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 into his guilty plea).

<sup>49</sup> D.I. 54 (Affidavit of Trial Counsel).

<sup>50</sup> D.I. 54.

the vehicle to avoid apprehension by the police. There was no legal basis to file a motion to suppress.<sup>51</sup>

60. Wilmer contends that there was “at least some basis” to file a suppression motion, but he does not provide any support or specifics for this allegation.<sup>52</sup> Conclusory, unsupported and unsubstantiated allegations are insufficient to establish a claim of ineffective assistance of counsel.<sup>53</sup>

61. Wilmer contends that trial counsel should have filed baseless motions simply because Wilmer wanted them filed.<sup>54</sup> Counsel did not file any pre-trial motions because he did not believe there was any legal or factual basis to do so.<sup>55</sup>

62. 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>56</sup> Trial counsel has an ethical obligation not to file meritless and baseless motions and cannot be found ineffective for adhering to his ethical obligations.

63. This claim is without merit.

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<sup>51</sup> D.I. 54.

<sup>52</sup> D.I. 57- Wilmer’s Reply in Support of Rule 61 motion, at pgs. 4-5.

<sup>53</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>54</sup> D.I. 57- Wilmer’s Reply in Support of Rule 61 motion, at pgs. 4-5.

<sup>55</sup> D.I. 54.

<sup>56</sup> *State v. Exum*, 2002 WL 100576, at \*2 (Del.Super.), *affirmed*, 2002 WL 2017230, at \*1 (Del.).

### **Claim Three- Counsel Ineffective for Failing to Communicate and Defend**

64. The third claim that Wilmer raises is that trial counsel was ineffective for failing to communicate with him to develop a viable, sound and workable trial strategy and defend him against the charges.<sup>57</sup>

65. Trial counsel, in his Affidavit, explains that he met with Wilmer regularly during the pretrial process. Because a plea offer was not made prior to trial, it was apparent that the case was going to trial. A great majority of their meetings were spent discussing trial strategy and Wilmer's defense.<sup>58</sup>

66. Trial counsel explained that the trial strategy was to establish a lack of knowledge of the firearm in the vehicle, along with the lack of efforts made by the police to fully investigate the case, which correlated to the lack of physical evidence to connect Wilmer to the firearm that was located in the vehicle.<sup>59</sup> The strategy was effective, and the jury did not find Wilmer guilty of PFBPP and PABPP.

67. A review of the trial transcript reveals that the trial strategy was expertly executed by trial counsel. Trial counsel was effective in convincing several jurors to find Wilmer not guilty on the PFBPP and PABPP charges, which resulted in a mistrial.

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<sup>57</sup> D.I. 34- Wilmer's Rule 61 Motion- Ground Three; D.I. 57- Wilmer's Reply in Support of Rule 61 motion, at pgs. 6-7.

<sup>58</sup> D.I. 54.

<sup>59</sup> D.I. 54.

68. Wilmer has failed to make any concrete allegations of actual prejudice and substantiate them. Wilmer's ineffective assistance of counsel claims were waived at the time of the plea and are without merit.

### **CONCLUSION**

69. Following a careful review of the record, and for the reasons discussed above, the Court concludes that the claims raised in Wilmer's Rule 61 Motion for Postconviction Relief were waived at the time he entered into his valid plea and both postconviction motions are without merit.

70. The Court is also satisfied that Wilmer's Rule 61 counsel made a conscientious effort to examine the record and the law and has properly determined that Wilmer does not have a meritorious claim to be raised in his Rule 61 motion.

71. In light of the absence of any meritorious postconviction claims, Wilmer's pending postconviction motions should be **DENIED**, and Rule 61 counsel's motion to withdraw should be **GRANTED**.

**IT IS SO RECOMMENDED.**

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

cc: Prothonotary  
Brian Chapman, Esquire  
Gregory M. Johnson, Esquire  
Defendant Bryon Wilmer