

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

STATE OF DELAWARE,	)	
	)	
v.	)	I.D. # 0708025863
	)	
	)	
DAVID CAMACHO,	)	
	)	
Defendant.	)	

Date Submitted: December 12, 2008  
Date Decided: March 31, 2009

**OPINION**

*Defendant's Pro Se Motion for Postconviction Relief*  
**DENIED.**

Scott, J.

1. On January 7, 2008, Defendant, David Camacho (“Camacho”) pled guilty to one count of Rape Second Degree.<sup>1</sup> On March 28, 2008, he was sentenced to ten years at Level V incarceration followed by one year at Level III probation.<sup>2</sup> On June 17, 2008, Camacho filed the current motion for postconviction relief.<sup>3</sup> In this motion, Camacho raises three grounds for postconviction relief. Specifically, he claims that (1) he received ineffective assistance of counsel; (2) he was subjected to an illegal search and seizure; and (3) his confession and guilty plea were coerced.

2. Before addressing the merits of a postconviction relief claim, the Court must first determine whether the claims pass through the procedural filters of Rule 61(i).<sup>4</sup> To protect the integrity of the procedural rules, the Court will not address the substantive aspects of the defendant’s claims if they are procedurally barred.

3. Camacho’s second and third claims are procedurally barred under Rule 61(i)(3).<sup>5</sup> This rule bars claims for relief that were not asserted

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<sup>1</sup> Plea Agreement, Docket Item (“D.I.”) 6.

<sup>2</sup> Sentence Order, D.I. 8.

<sup>3</sup> Mot. for Postconviction Relief, D.I. 11.

<sup>4</sup> *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991)(“The first inquiry in any analysis of a post-conviction relief claim is whether the petition meets the procedural requirements of Rule 61.”) *See also Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>5</sup> Super. Ct. Crim. R. 61(i)(3) provides: *Procedural Default*. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows

in the proceedings below unless the defendant can show cause and prejudice for his failure to raise the issue. In his second claim, Camacho argues that “blood was taken from [him] without his being arrested and charged.” This was an issue that Camacho was aware of before he pled guilty. He had the right to file a motion with the Court to seek suppression of evidence and he had the right to present his case at trial. Camacho did not choose either of these options. Rather, he chose to waive those rights and plead guilty. Because Camacho fails to show cause and prejudice for his failure to raise this issue before he pled guilty, this claim is procedurally barred.

4. Camacho’s third claim fails for the same reason. He claims that the State prosecutor and defense counsel used threats to force him to plead guilty. In their respective Response and Affidavit, the State and defense counsel deny this allegation. Moreover, Camacho executed the Court's truth-in-sentencing guilty plea form indicating he was not forced or threatened into entering his plea and the Court reviewed these questions with him during the plea colloquy.<sup>6</sup> The guilty plea form also indicates that the penalty for Rape Second Degree is 10-25 years incarceration and that 10 years is the minimum mandatory sentence. Camacho signed the form

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(A) Cause for relief from the procedural default and (B) Prejudice from violation of the movant's rights.

<sup>6</sup> Truth in Sentencing Guilty Plea Form, D.I. 6.

acknowledging that he understood the penalty range for Rape Second Degree. In the absence of clear and convincing evidence to the contrary, Camacho is bound by his answers on the guilty plea form and by his testimony at the plea colloquy.<sup>7</sup>

5. Camacho also makes a claim of ineffective assistance of counsel. To prevail on this claim, Camacho must meet the two-pronged *Strickland* test by showing that (1) counsel performed at a level “below an objective standard of reasonableness,” and (2) “the deficient performance prejudiced the defense.”<sup>8</sup> The first prong requires Camacho 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 trial counsel’s unprofessional errors, the result of the proceeding would have been different.”<sup>9</sup> There is a strong presumption that counsel’s conduct was professionally reasonable.<sup>10</sup> When a court examines a claim of ineffective assistance of counsel, it may address either prong first; where one prong is not met, the claim may be rejected without contemplating the other prong.<sup>11</sup>

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<sup>7</sup> See *State v. Stuart*, 2008 WL 4868658, \*3 (Del. Super. Oct. 7, 2008) citing *Savage v. State*, 815 A.2d 349 (Del. 2003).

<sup>8</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

<sup>9</sup> *Id.* at 687-88, 694.

<sup>10</sup> *Albury v. State*, 551 A.2d 53, 59 (Del.1988).

<sup>11</sup> *Id.* at 697.

6. Camacho claims the language barrier between him, defense counsel and the translator caused him to receive ineffective assistance of counsel. Camacho is a citizen of Mexico and he does not understand English. He claims that the translator spoke a Spanish dialect that was different from the Mexican dialect that he speaks. Camacho claims that because of the language barrier, he was unable to communicate his desire to go to trial to defense counsel. In his affidavit, defense counsel states that the translator, Mr. Jenkins, speaks all dialects of Spanish and Camacho never indicated that he had any difficulty understanding Mr. Jenkins. Nor did Camacho ever indicate to the Court that he had any difficulty understanding Mr. Jenkins. On the truth-in-sentencing guilty plea form, Camacho indicated that he was fully satisfied with defense counsel's representation, that defense counsel fully advised him of his rights and that he understood all of the information contained on the form. Defense counsel states in his affidavit that Camacho never expressed any other intention but to enter a plea.<sup>12</sup> There is nothing in the record to support Camacho's contention that he wanted to go to trial or that his counsel failed to represent Camacho's intentions at that time. Furthermore, as the State points out in its Response, Camacho confessed to engaging in sexual intercourse with the then 15 year

old victim at least once. The one count of Rape Second Degree that Camacho pled to was based on this confession. Camacho was indicted on twenty-two counts of Rape Second Degree, six counts of Unlawful Sexual Contact Second Degree, one count of Unlawful Imprisonment Second Degree and one count of Continuous Sexual Abuse of a Child. In return for pleading guilty to one count of Rape Second Degree, the State *nolle prossed* all the remaining charges. Camacho clearly benefited from pleading guilty. Because Camacho fails to make the requisite showing under *Strickland*, his claim is denied.

For the reasons discussed above, Camacho's Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61, is hereby **DENIED**.

**IT IS SO ORDERED.**

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**Judge Calvin L. Scott, Jr.**