IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	)	
	)	
v.	)	I.D. No. 1308011076
	)	
JANIIS MATHIS,	)	
	)	
Defendant.	)	

Submitted: September 12, 2016
Decided: October 5, 2016

ORDER

Upon Defendant's Motion for Postconviction Relief,
DENIED.

Upon Motion to Withdraw as Counsel for Petitioner Janiis Mathis,
GRANTED.

Dana L. Reynolds, Esquire, LAW OFFICES OF DANA L. REYNOLDS, LLC, 30C Trolley Square, Wilmington, DE 19806

Joseph Grubb, Esquire, Deputy Attorney General, Department of Justice, 820 N. French St., Wilmington Delaware, Attorney for the State.

Janiis Mathis, Smyrna, DE

WHARTON, J.

This 5th day of October, 2016, upon consideration of Defendant's Motion for Postconviction Relief, the Motion to Withdraw as Counsel for Petitioner Janiis Mathis of Dana L. Reynolds, Esquire, and the record in this matter, it appears to the Court that:

1. On August 14, 2013, Defendant Janiis Mathis ("Mathis") was arrested by the Wilmington Police Department and charged with Possession of a Firearm by a Person Prohibited, Carrying a Concealed Deadly Weapon (Firearm) and Resisting Arrest.[1] Mathis was bound over after a preliminary hearing in the Court of Common Pleas.[2] A fast track case review was held on December 4, 2013, at which time Mathis waived indictment and entered a guilty plea to Possession of a Firearm by a Person prohibited (PFBPP).[3] As part of the plea agreement, the State agreed to cap its sentencing recommendation at 15 years at level V, petition to have Mathis declared a habitual offender pursuant to 11 *Del. C.* § 4214(a), and recommend that Mathis be discharged as unimproved from probation for a violation of probation.[4] The State's Motion to Declare Janiis O. Mathis a Habitual Offender was granted and Mathis was sentenced to 15 years at level V as a habitual offender on April 11, 2014.[5]

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[1] D. I. 22 at 1.
[2] *Id.* at 1-2.
[3] *Id.* at 2.
[4] *Id.*
[5] *Id.* at 3.

2. Shortly thereafter, Mathis filed a timely *pro se* Motion for Postconviction Relief ("Motion") on May 6, 2014.[6] The Motion alleged that Mathis' attorney, Andrew Rosen, Esquire, coerced him into pleading guilty and provided ineffective assistance of counsel.[7] Mathis also requested appointment of counsel.[8] The Motion was inadvertently misfiled with the numerous pending Rule 61 Motions involving drug testing by the Medical Examiner's Office and not brought to the Court's attention until September 29, 2015. On October 12, 2015, the Court ordered the office of Conflict Counsel to appoint counsel for Mathis.[9] Pursuant to the Court's Order, the Office of Conflict Counsel assigned Dana L. Reynolds, Esquire to represent Mathis on May 10, 2016. On July 29, 2016, Ms. Reynolds filed this Motion to Withdraw as Counsel after carefully reviewing the case for potential grounds for relief and finding none.[10] Mathis was notified of his opportunity to submit a response to the Motion to Withdraw within 30 days on August 11, 2016. He has not responded.

3. Under Delaware Superior Court Rules of Criminal Procedure, a motion for post-conviction relief can be barred for time limitations, repetitive motions, procedural defaults, and former adjudications. A motion exceeds time limitations if it is filed more than one year after the conviction becomes final or if it asserts a

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[6] D. I. 11.
[7] *Id.* at 3.
[8] D. I. 13.

newly recognized, retroactively applied right more than one year after it was first recognized.[11] A motion is considered repetitive and therefore barred if it asserts any ground for relief "not asserted in a prior post-conviction proceeding."[12] Repetitive motions are only considered if it is "warranted in the interest of justice."[13] Grounds for relief "not asserted in the proceedings leading to the judgment of conviction" are barred as procedurally defaulted unless the movant can show "cause for relief" and "prejudice from [the] violation."[14] Grounds for relief formerly adjudicated in the case, including "proceedings leading to the judgment of conviction, in an appeal, in a post-conviction proceeding, or in a federal habeas corpus hearing" are barred.[15] Former adjudications are only reconsidered if "warranted in the interest of justice."[16]

4. Before addressing the merits of Defendant's Motion for Post-conviction Relief, the Court must first apply the procedural bars of Superior Court Criminal Rule 61(i).[17] If a procedural bar exists, then the Court will not consider the merits of the post-conviction claim.[18]

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[9] D. I. 14.
[10] D. I. 22.
[11] Super. Ct. Crim. R. 61(i)(1).
[12] Super. Ct. Crim. R. 61(i)(2).
[13] *Id.*
[14] Super. Ct. Crim. R. 61(i)(3).
[15] Super. Ct. Crim. R. 61(i)(4).
[16] *Id.*
[17] *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).
[18] *Id.*

5. The Court treats Mathis' claim that his guilty plea was coerced as a post sentencing motion to withdraw his guilty plea, which pursuant to Superior Court Criminal Rule 32(d), must be made by motion under Rule 61.[19] After reviewing the Motion and the bars of Rule 61(i), it is apparent that Mathis' claims that his plea was coerced and that he received ineffective assistance of counsel are not procedurally barred. It is a timely first motion seeking to set aside his plea and raising a claim of ineffective assistance of counsel, a claim that he could not raise in the proceedings leading to the judgment of conviction. Neither claim has been previously adjudicated.

6. Mathis alleges that his guilty plea was coerced. Specifically, he claims that his attorney told him that if he went to trial, he would not win and that while he was being questioned by the Court during the entry of his plea he told the Court that he was not entering his plea freely and voluntarily, but changed his answer to "yes" when his attorney told him that he had to say "yes" for his attorney to help him and for the Court to accept his plea.[20] Even if Mathis' attorney told him he would lose at trial that statement does not amount to coercion. Rather, it appears to be an accurate assessment of the evidence facing Mathis as reflected in the affidavit of probable cause in support of the arrest warrant[21] and the transcript of the preliminary

[19] Super. Ct. Crim. R. 32(d).
[20] D. I. 11.
[21] D. I. 22, Ex. 1.

hearing.[22] The uncomplicated evidence consisted of Mathis being observed with what appeared to be a handgun in the waistband of his pants and fleeing when the police stopped behind him.[23] During the chase, the officers saw him pull the firearm from his waistband, continue running with the gun in his right hand, and eventually throw it, hitting a house.[24] One of the officers recovered the firearm while the other continued pursuing Mathis.[25] Mathis was taken into custody by one of the original pursuing officers and other police officers.[26] Given this overwhelming evidence of Mathis' guilt, his attorney was merely stating the obvious.

7. Mathis' claim that he initially told the judge who accepted his plea that he was not pleading guilty freely and voluntarily is not supported by the transcript of the plea colloquy. When asked if anyone was forcing him to enter the plea, Mathis answered, "No."[27] When asked if he wished to enter the plea and admit to the violation of probation, Mathis answered, "Yes."[28] In addition, on the Truth in Sentencing Guilty Form executed by Mathis, he answered "Yes" to the question, "Have you freely and voluntarily decided to plead guilty to the charges listed in the written plea agreement?"[29] He answered "No" to the question "Has your lawyer, the

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[22] *Id.,* Ex. 2.
[23] *Id.,* Ex. 2 at 6.
[24] *Id.*, Ex. 2 at 7.
[25] *Id.*
[26] *Id.*, Ex. 2 at 8.
[27] *Id.,* Ex. 6 at 7.
[28] *Id.*, Ex. 6 at 8.
[29] D. I. 4.

State, or anyone threatened or forced you to enter this plea?"[30] Accordingly, the Court finds that Mathis' guilty plea was not coerced.

8. The Court now turns to the claim of ineffective assistance of counsel. To successfully articulate a colorable ineffective assistance of counsel claim, a claimant must demonstrate that: (1) his defense counsel's representation fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.[31] When addressing the prejudice prong of the ineffective assistance of counsel claim in the context of a challenged guilty plea, an inmate must show 'that there was a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."[32] An inmate must satisfy the proof requirements of both prongs to succeed on an ineffective assistance of counsel claim. Failure to do so on either prong will doom the claim and the Court need not address the other.[33] "Mere allegations of ineffectiveness will not suffice. A defendant must make specific allegations of actual prejudice and substantiate

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[30] *Id.*

[31] *Strickland v. Washington,* 466 U.S. 668 (1984); *see also Alston v. State,* 2015 WL 5297709, at *3 (Del. 2015).

[32] *Albury v. State,* 551 A.2d 53,59 (Del. 1988) (citing *Hill v. Lockhart,* 474 U.S. 52, 58 (1985)); *Sartin v. State,* 2014 WL 5392047, at*2 (Del. Oct. 21, 2014); *State v. Hackett,* 2005 WL 30609076, at *3 (Del. Super. Ct. Nov. 15, 2005).

[33] *Strickland,* 446 U.S. at 697; *Ploof v. State,* 75 A.3d 811, 825 (Del. 2103) (*Strickland* is a two-pronged test, and there is no need to examine whether an attorney performed deficiently if the deficiency did not prejudice the defendant.").

them."[34] There is always a strong presumption that counsel's representation was reasonable.[35] So, the defendant may not rely on conclusory statements of ineffectiveness; he must plead all allegations of ineffectiveness with particularity.[36]

9. The claim of ineffective assistance of counsel alleges that: (1) Mr. Rosen failed to provide Mathis with discovery materials provided by the State pursuant to Superior Court Rule 16 thereby depriving him of an opportunity "to prepare for the case;"[37] (2) Mathis "fe[lt] that Mr. Rosen just wanted to get the case over because "he never came to see me an (sic) talk about my case;[38] and that "He [Mr. Rosen] was pushing pleas at me telling me that I had to take it cause I was not going to win trial."[39] Although not part of his Motion for Postconviction Relief, Mathis also alleges in his request for appointment of counsel that Mr. Rosen was ineffective in failing to oppose the State's petition to have him declared a habitual offender.[40] Not one of these allegations supports a claim of ineffective assistance of counsel.

10. Although Mathis never specifically states that, but for Mr. Rosen's alleged unprofessional errors, he would not have pled guilty and would have insisted

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[34] *Wright v. State,* 671 A.2d 1353, 1356 (Del. 1996).
[35] *Id.*
[36] *See Monroe v. State,* 2015 WL 1407856, at *5 (Del. 2015) (citing *Dawson v. State,* 673 A.2d, 1186, 1196 (Del. 1996).
[37] D. I. 11 at 3.
[38] *Id.*
[39] *Id.*
[40] D. I. 13.

on going to trial, the Court will infer *arguendo* that to be Mathis' position.[41] In her motion to withdraw as counsel, postconviction relief counsel addresses at length Mathis' claim that he was unable to "prepare for the case" because discovery materials were not provided to him.[42] The Court adopts counsel's assessment of that claim. The Court only adds that this was a very simple case in which the State had overwhelming evidence of Mathis' guilt, evidence of which Mathis was well aware from the affidavit of probable cause in support of the arrest warrant and the preliminary hearing testimony. Moreover, the discovery materials that Mathis claims he was not provided consist of the short police reports of: (1) the officer who authored the affidavit of probable cause and who testified at the preliminary hearing consistently with his report and the affidavit;[43] (2) one the officers who took Mathis into custody after he had discarded the weapon;[44] and (3) the officer who took photographs of the scene and the weapon.[45] Mathis does not explain how these limited materials, which would have added nothing to Mathis' understanding of the case, would have made any difference in his ability to prepare. On this allegation, the Court finds that the claim fails both the performance and prejudice prongs of *Strickland.*

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[41] The Court considers it dubious at best that Mathis would risk a potential life sentence plus six years for violating his probation by insisting on trial when the plea secured him a recommendation of the minimum sentence possible and a discharge from probation. *See*, D. I. 4.
[42] D. I. 22 at 11-13.
[43] *Id.* at Ex. 10.
[44] *Id.* at Ex. 11.

11. Similarly postconviction counsel sets out in detail the communications and in person contact between Mr. Rosen and his staff with Mathis.[46] The Court finds that Mathis was well informed of his options and the progress of his case and that Mathis had ample opportunity to convey his thoughts to Mr. Rosen. Further, Mathis has failed to articulate what benefits additional in person communication would have brought him. Again, on this claim Mathis has failed to meet both the performance and prejudice prongs of *Strickland.*

12. Mathis' final claim of ineffective assistance of counsel claim is that Mr. Rosen did not oppose the State's petition to have him declared a habitual offender. This claim fails on both prongs as well. The Court has reviewed the petition and finds that it sets forth the requisite number of Mathis' previous felony convictions, in the requisite sequence with intervening opportunities for rehabilitation to qualify Mathis as a habitual offender.[47] There was simply no good faith basis for Mr. Rosen to oppose the motion.

Therefore, Defendant's Motion for Post-conviction Relief is **DENIED**.

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[45] *Id.* at Ex 12.
[46] *Id.* at 14-15.
[47] *See,* D. I. 5; *See also,* 11 *Del. C.* § 4214(a).

The Motion to Withdraw as Counsel for Petitioner Janiis Mathis is **GRANTED.**

IT IS SO ORDERED.

Ferris W. Wharton, J.

oc: Prothonotary
cc: Investigative Services