

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

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	ID No. 1203000952
)	
BRADLEY HAMPTON,)	
)	
Defendant.)	

MEMORANDUM OPINION

Defendant has brought a Rule 61 motion seeking post conviction relief contending that his counsel was ineffective because counsel, contrary to Defendant’s instructions, failed to file a motion to withdraw his guilty plea. The court finds that this motion is not procedurally barred and therefore will reach its merits.

Procedural History

Defendant was charged with Robbery in the first degree, Possession of a Deadly Weapon During the Commission of a Felony, Conspiracy in the Second Degree and Criminal Mischief as the result of a vicious crime occurring in a mall parking lot. According to the State, the defendant and a female companion robbed a female victim and during the course of the robbery the defendant punched and kicked the victim and then ran over her with his car.

In January, 2013 Defendant entered a plea before this judge to Robbery first and Conspiracy Second. He was later sentenced by another judge to five years at level five (with probation to follow) for the Robbery conviction and probation for the Conspiracy conviction. The Defendant asserts he instructed his attorney to file a motion to withdraw his guilty plea. Although it is not clear when these instructions were allegedly given, the court will assume for present purposes that they were given before Defendant was sentenced. Defendant's then counsel states he has no record or recollection of ever having been asked to move to withdraw the plea.

The court finds that the instant Rule 61 motion is not procedurally barred. This is Defendant's first motion for post-conviction relief and it was brought within one year of the date the conviction became final. The court appointed counsel to represent Defendant in the post-conviction proceeding.

Analysis

Defendant argues that he requested his counsel to move to withdraw his guilty plea and that his counsel failed to do so. Thus, Defendant argues, his counsel was ineffective. The standard for showing ineffective assistance of counsel is a familiar one which needs little explication here. Suffice it to say the Delaware Supreme Court has summarized the law this way:

To establish ineffective assistance of trial counsel, [Defendant] must demonstrate that trial counsel's representation fell below an objective standard of reasonableness and that, but for trial counsel's unprofessional errors, there is a reasonable probability that the outcome of the trial would have been different. Mere allegations of ineffectiveness will

not suffice; a defendant must make and substantiate concrete allegations of actual prejudice. Moreover, there is a strong presumption that trial counsel's conduct fell within a wide range of reasonable professional assistance and constituted sound trial strategy.¹

The court questions Defendant's allegations that he asked his previous counsel to seek to withdraw his guilty plea. In an affidavit filed with this court previous counsel stated he had no record of ever having received such a request. Significantly, when Defendant addressed the court at sentencing he made no mention of ever having made a request to his attorney to withdraw his plea, and it is months after having received his sentence that Defendant first raised this issue.

In order to make out a claim of ineffective assistance of counsel a defendant must show, among other things, that if counsel had been effective, there was a reasonable chance that the result would have been different. In other words, defendant Hampton must show that if his attorney had filed a motion to withdraw his guilty plea there was a reasonable probability it would have been granted. Mr. Hampton has not made this showing.

There is little likelihood the court would have granted a motion to withdraw Defendant's guilty plea. Motions to withdraw a guilty plea are addressed to the court's discretion. Criminal Rule 32(d) permits the court to allow withdrawal of a plea "upon a showing by the defendant of any fair and just reason." The lodestar in making this determination is whether the plea was

¹ *Norman v. State*, 2013 WL 6710794 (Del.)(footnotes omitted).

not voluntary or the defendant was under a misapprehension of his rights. As the Supreme Court has written recently, and on many prior occasions:

Upon moving to withdraw his guilty plea, [Defendant] had the burden to establish a fair and just reason to permit the withdrawal. A judge should permit withdrawal of a plea only if the judge determines that “the plea was not voluntarily entered or was entered because of misapprehension or mistake of defendant as to his legal rights.” Here, the record unequivocally establishes that [Defendant] entered his plea voluntarily and that he was not operating under any misapprehension or mistake as to his legal rights.²

In making this determination a court should consider several factors:

- 1) Was there a procedural default in taking the plea;
- 2) Did [defendant] knowingly and voluntarily consent to the plea agreement;
- 3) Does [defendant] presently have a basis to assert legal innocence;
- 4) Did [defendant] have adequate legal counsel throughout the proceedings; and,
- 5) Does granting the motion prejudice the State or unduly inconvenience the Court.³

Applying these factors to the facts in this case leads to the conclusion that the plea was voluntarily entered and the Defendant was not under any misapprehension of fact.

- 1) Neither Defendant in his pro se application nor appointed post conviction counsel point to any procedural irregularity in the taking of the plea.

² *Williams v. State*, 2014 WL642281 (Del.)(footnotes omitted).

³ *Scarborough v. State*, 938 A.2d 644, 649 (Del. 2007).

2) The transcript of the plea colloquy shows that Defendant was fully aware of his rights and the consequences of his actions. At the plea he told the court that he understood the Plea Agreement and agreed with what he said. He further stated that the Plea Agreement he signed contained the entire agreement between him and the State. Although Defendant suggests he was told he would likely get a longer sentence if he did not plead, he acknowledged at his plea hearing that he could receive up to 27 years at Level 5 and that he must serve at least three years (he received five years). In his *pro se* motion Defendant also suggests he was “coerced” into entering the plea. That is belied by the colloquy between him and the court:

THE COURT: Did anyone promise you what sentence the Court will impose if I accept your sentence?

THE DEFENDANT: No, sir.

THE COURT: Has anyone promised anything at all in exchange for your plea?

THE DEFENDANT: No, sir.

THE COURT: Mr. Hampton, has anyone threatened you or tried to force you into making this plea?

THE DEFENDANT: No, sir.

3) Defendant has made little or no effort to show his innocence. At most Defendant refers to a mall surveillance tape. Ironically he complains that the tape was never reviewed, but then tells the court that

the tape shows he was on the opposite side of the car from where the beating occurred. In any event, the victim and three eye witnesses were prepared to testify that the defendant beat and ran over the victim. This falls far short of a showing of legal innocence.

Defendant also states that he did not take the property from the victim but rather his female companion did so. This does not absolve Defendant because he and his companion conspired to rob the victim.

4) There is no substantial evidence that Defendant's original counsel was ineffective before the plea was entered. The only substantial claim is that counsel failed to move to withdraw the plea. Necessarily, of course, this took place after the plea was entered.

5) Withdrawal of this plea would inconvenience the court. If the court were to permit withdrawal of a plea based upon the flimsy grounds proffered by Defendant, almost no plea would be sacrosanct. Rather granting Defendant's motion would serve as an open invitation to others with belated second thoughts to seek to withdraw their pleas and, if the grounds stated by Defendant were deemed sufficient, the court would be hard pressed to find any plea which could not be withdrawn.

In sum, Defendant has failed to show reasonable probability that the court would have granted a motion to withdraw his plea if his attorney had filed one. The court therefore holds that Defendant has failed to show his previous counsel was ineffective. Accordingly, his Rule 61 motion is **DENIED**.

Date: March 26, 2014

John A. Parkins, Jr.
Superior Court Judge

oc: Prothonotary

cc: Caterina Gatto, Esquire, Wilmington, Delaware - Attorney for the State
Richard J. Zemble, Esquire, Wilmington, Delaware - Attorney for the
Defendant