SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

October 29, 2014

Matthew E. Starr
SBI# 0052
SCI
P.O. Box 500
Georgetown, DE 19947

Alexander Funk, Esquire
250 Beiser Boulevard, Suite 202
Dover, DE 19904

RE: *State of Delaware v. Matthew E. Starr*, Def. ID#s 1208019108 and 1209018395 (R-1)

DATE SUBMITTED: August 20, 2014

Dear Mr. Starr and Mr. Funk:

Pending before the Court is a motion for postconviction relief which defendant Matthew E. Starr ("defendant") filed pursuant to Superior Court Criminal Rule 61 ("Rule 61").[1] Also pending is postconviction relief counsel's motion to withdraw pursuant to Rule 61(e)(2). This is my decision denying the motion for postconviction relief and ruling the motion to withdraw is moot.

[1]The version of Rule 61 which applies to this case is that in effect as of May 6, 2013, a copy of which is enclosed herein.

In August, 2012, defendant was charged with numerous sex offenses involving his then girlfriend's minor daughter in the case of *State of Delaware v. Matthew E. Starr*, Def. ID# 1208019108 (hereinafter, "*Starr I*"). As a condition of his bond, he was ordered to have no contact with the victim or her family members. He thereafter sent two letters to the victim's mother. He was arrested for violating his bond conditions in the case of *State of Delaware v. Matthew E. Starr*, Def. ID# 1209018395 (hereinafter, "*Starr II"*).

Defendant was not pleased with his trial counsel and filed a lawsuit in Federal District Court against him. Then, citing to the existence of this federal case, defendant sought to have trial counsel disqualified to represent him in *Starr 1*. This Court denied that request.[2]

A motion to suppress in *Starr I* was scheduled for March 8, 2013. On that day, defendant entered into a plea agreement to resolve *Starr I* and *Starr II.* Defendant possesses a copy of the transcript of the plea colloquy and sentencing from March 8, 2013; yet, in his Rule 61 submissions, he ignores what occurred. Below, I provide a detailed summary of the plea colloquy because it establishes the facts of this case.

Trial counsel explained the following. The parties came to the courthouse that day for the suppression motion. Trial counsel received a revised plea offer which he conveyed to defendant. He met with defendant for a while to answer defendant's questions regarding the plea. He previously had met with defendant a number of times at Sussex Correctional Institution to prepare for the suppression hearing, trial, and possible plea negotiations. Trial counsel explained:

> Today I again went over the plea agreement and truth-in-sentencing form and the immediate sentencing form with Mr. Starr. We went through those together line by line. We discussed the nature of the charges, the evidence against him, the

[2]*Starr I,* Doc. Entries 10 and 13.

> maximum penalties he faces, and the important constitutional trial rights he is giving up by doing this plea. With all that, I believe he is entering this plea knowingly, intelligently, and voluntarily.[3]

Defendant then was put under oath and was informed that if his answers were not truthful, he was looking at a perjury charge.

The Court verified with defendant that trial counsel's representations set forth above were accurate and that defendant did not disagree with any statement of trial counsel. The Court then questioned defendant in detail about his satisfaction with trial counsel. The Court recounted that defendant had been unhappy with trial counsel earlier. The Court verified with defendant that he was "fully satisfied"[4] with trial counsel's representation, had no complaints about the representation, and found nothing objectionable about the representation.

Defendant confirmed he had enough time to go over his case with trial counsel. Defendant further confirmed that he had read and signed both the Truth-In-Sentencing Guilty Plea Form ("TIS Form") and the Plea Agreement. As postconviction counsel notes, by signing those documents, defendant affirmed the following:

* He was freely and voluntarily pleading guilty;

* He was not threatened or forced into pleading guilty;

* He understood he was waiving his Constitutional trial rights;

* He understood the potential prison sentence;

* He was satisfied with his trial counsel's representation of him;

* He understood all of the information contained in the forms; and

---

[3]Transcript of March 8, 2013 Plea and Sentencing at 2-3 ("Trans. at __").

[4]*Id.* at 4.

* His answers were truthful.

Defendant affirmed to the Court that trial counsel went over each line of the forms with him and that he truthfully checked each box beside the questions. Defendant affirmed he understood the information in the forms and trial counsel had answered any questions defendant had.

The Court explored defendant's mental health history, confirming that defendant had been in the hospital for mental health treatment when was 15,[5] and also confirming that he was of sound mind currently and thus, was competent to enter the plea.

The following colloquy occurred regarding the voluntariness of the plea:

> THE COURT: Nobody can force you to plead guilty because when you plead guilty, you incriminate yourself, you lose your valuable trial and appeal rights, and you subject yourself to the penalties of law; do you understand that?
>
> THE DEFENDANT: Yes, I do.
>
> THE COURT: Is anybody forcing you to plead guilty?
>
> THE DEFENDANT: No.
>
> THE COURT: Is anyone putting any pressure on you to plead guilty?
>
> THE DEFENDANT: No.[6]

The Court then went over each and every trial right defendant was giving up by entering the plea. I set forth the actual words spoken regarding defendant's right to testify:

> If you had a defense, you can present it on your behalf. You can testify or not testify as you might choose to do. If you chose not to testify, the jury would be told not to take it against you because it is an exercise of a valuable constitutional

---

[5]Defendant was 25 when he entered the plea.

[6]Trans. at 7-8.

right.[7]

The Court then confirmed the following facts from defendant:

THE COURT: Is anybody forcing you to give up your valuable trial and appeal rights?

THE DEFENDANT: No.

THE COURT: Do you understand, as well, by pleading guilty here this afternoon, that any complaints you might have had about how the prosecution was commenced, about any statements that you made, about any evidence that had been taken from you, any complaints at all that you might have with respect to any of those matters are gone and lost forever?

THE DEFENDANT: I have no complaints.

THE COURT: You have no complaints, I understand that, but do you understand that you are not going to be able to make any complaints about, for example, Miranda was not properly given to you; do you understand what Miranda is?

THE DEFENDANT: Yes.

THE COURT: One of the issues that had been set up for the suppression hearing today was that the Miranda rights were not properly given; do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you understand that by pleading guilty here today, any complaints about Miranda, your rights that were given or not given, any irregularities in how the statement was obtained, any claimed pressures about how the statement was obtained, any complaints, they are all gone, they are done, finished; do you understand that?

THE DEFENDANT: Yes.[8]

The Court reviewed with defendant his understanding of the charges to which he was

---

[7] *Id.* at 8.

[8] *Id.* at 9-10.

pleading guilty, the evidence in the case, and the punishments. The Court explained as follows:

> THE COURT: As a result of the conviction, you will be a Tier 3 sex offender registration. That is the most serious and highest level; do you understand that?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Should you get a driver's license, there would be a letter put on it and you will always be identified as a sex offender; do you understand that?
>
> THE DEFENDANT: Yes.
>
> THE COURT: The penalties which are proposed and which I intend to impose, that is being recommended, on rape in the second degree, a 25 year Level 5 sentence. After serving 13 years at Level 5, the balance will be suspended for one year Level 4 work release or home confinement. You will be held at Level 5 pending the placement, followed by ten years Level 3; do you understand that?
>
> THE DEFENDANT: Yes.
>
> \
>
> THE COURT: With respect to the continuous sexual abuse of a child, it would be 25 years Level 5 suspended after serving two years and the successful completion of the Level 5 Family Problems Program, the balance will be suspended for 20 years of Level 3; do you understand that?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Do you understand the probation would be consecutive to ensure against recidivism, that is to ensure that you don't get involved with sexual offenses with children; do you understand that?
>
> THE DEFENDANT: Yes.
>
> THE COURT: With respect to the breach of conditions of release, it will be five years Level 5, suspended for one year Level 3; do you understand that?
>
> THE DEFENDANT: Yes.
>
> ***
>
> THE COURT: There will be no contact with ... [the victim and her family], and minors, except there will be no unsupervised contact with your son, Matthew Starr; do you understand that?

THE DEFENDANT: Yes.[9]

The Court reviewed with defendant the various consequences of being convicted of a sex offense, including, again, that defendant would have a Tier 3 registration. Defendant affirmed he understood everything.

The colloquy then was:

> THE COURT: What you are doing here this afternoon, does this represent a free and voluntary choice on your part to incriminate yourself to these charges and to expose yourself to these penalties?
>
> THE DEFENDANT: Yes.[10]

The Court examined with defendant the elements of the offenses and verified trial counsel had explained each charge to him and defendant understood each element. Defendant admitted to committing the three crimes. The following colloquy then took place:

> THE COURT: Have you told me the truth this afternoon?
>
> THE DEFENDANT: Yes, I have.
>
> THE COURT: I am finding, therefore, that you are making a knowing, intelligent, and voluntary decision. Judgments of conviction are entered to rape in the second degree, the lesser-included offense of Count 1, continuous sexual abuse of a child in Count 11, and for the charge of breach of conditions of release. Judgments of conviction are entered.[11]

After defendant stated he had nothing to ask or say before the imposition of sentence, the Court imposed the sentence as set forth in the Plea Agreement and as it informed defendant, before he admitted the crimes, it would do. Thus, defendant was sentenced as follows. As to the

---

[9]Trans. at 10-12.

[10]*Id.* at 13.

[11]*Id.* 15-16.

rape in the second degree, he was sentenced to 25 years at Level 5, suspended after serving 13 years Level 5, with credit for 162 days previously served. The balance will be suspended for one year at Level 4 work release or home confinement, and defendant is to be held at Level 5 until space is available at Level 4, followed by 10 years at Level 3 probation. As to the continuous sexual abuse of a child, he was sentenced to 25 years at Level 5, suspended after serving 2 years and upon successful completion of the Level 5 Family Problems Program for 20 years at Level 3 probation. The Level 3 time is consecutive and not concurrent to ensure against recidivism, as provided by statute. As to the breach of conditions of release, defendant was sentenced to five years at Level 5, suspended for 1 year at Level 3, and the Level 3 time is to be served consecutively and not concurrently to ensure against recidivism and protect victims and to ensure against the recurrence of sexual misconduct. Defendant is to have no contact with the victim, her brother, her mother and all minors, except he is allowed supervised contact with his son, Matthew Starr.[12] All items seized were deemed forfeited. Defendant must undergo HIV testing, provide a DNA sample, meet all sex offender registration requirements, undergo sexual disorder treatment, and undergo mental health evaluations and comply with recommended treatment.

Despite the foregoing, defendant filed this Rule 61 motion wherein he disputes and denies his assurances, affirmations, and representations detailed above. He was appointed counsel on the Rule 61 motion, who moved to withdraw pursuant to Rule 61(e)(2). Trial counsel has submitted an affidavit. The State of Delaware ("the State") responded that because the claims involve the attorney/client relationship, it is precluded from taking a position regarding defendant's claims.

[12]The sentencing order misnames defendant's son as Michael Starr. The sentencing order has been amended to correct that clerical mistake.

I address defendant's claims below.

The following claims are procedurally barred because defendant did not assert them in a direct appeal:[13]

* He was coerced into the plea because trial counsel informed him that defendant was facing life imprisonment if he went to trial. The prosecutor and trial counsel "scared" him by telling him he would be locked away in jail for life if he did not take the plea at the suppression hearing. They informed him that the plea offer would increase to 25 years to life if he did not take the plea on the day of the suppression hearing. Defendant questions how trial counsel could have known how much time he would receive, "if any" if defendant would have gone to trial.

* Defendant's competency was at issue.

* The plea was defective for the following reasons:

    * He did not understand the collateral consequences of being convicted of a sex offense.

    * He never understood his rights.

    * He never fully understood what his plea agreement was saying.

    * A condition of him entering the plea was that he have unlimited contact with his son and he signed the plea agreement to that effect. His copy of the plea agreement shows the unlimited contact to have been scratched through and changed to read he was to have

[13] *Palmateer v. State,* 918 A.2d 339, 2007 WL 37772, *1 (Del. Jan. 5, 2007); Rule 61(i)(3) ("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 (A) Cause for relief from the procedural default and (B) Prejudice from violation of the movant's rights.")

no contact with minors "except no unsupervised contact" with defendant's son, Matthew Starr.

Defendant has not shown cause for relief from the procedural default and prejudice from a violation of his rights.[14] Furthermore, he has submitted nothing to establish a miscarriage of justice.[15]

Even if the Court ruled that defendant had overcome the procedural bars, it would not grant relief on any of these claims. The transcript establishes that defendant entered the plea knowingly and voluntarily. The Court and the paperwork clearly set forth every element of the plea. Furthermore, defendant confirmed that by pleading guilty, he understood he was giving up all of his trial rights, that no one had forced him to enter the plea, that he was guilty of the charges to which he pled, that he had had time to consult with his attorney and had gone over all aspects of the plea with his attorney, and that he was satisfied with his attorney's representation. Defendant is bound by his testimony prior to the acceptance of the plea and by his answers on the TIS Form in the absence of clear and convincing evidence to the contrary.[16] He has not presented any evidence, let alone clear and convincing evidence, of any claim to the contrary.

With that general statement in mind, I turn to each of his claims and review each within the context of his knowingly, intelligently, and voluntarily entering his plea.

---

[14] *Id.*

[15] *Palmateer v. State, supra;* Rule 61(i)(5) ("The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.")

[16] *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

I address the coercion claims first. "[T]he United States Supreme Court has determined that a defendant's decision to plead guilty as a means to avoid additional prison time does not amount to 'coercion.'" [17] Thus, the claims of coercion based 1) upon trial counsel and the prosecutor truthfully telling him that he was looking at significantly more time if convicted of his charges as well as 2) upon trial counsel telling him the plea offer would be withdrawn if he went forward with the suppression hearing, fail.

I turn to the competency arguments. The Court was aware defendant previously had been committed to a mental health facility. It explored defendant's mental capacity and his intellectual capacity and was satisfied that defendant was fully competent to enter the plea. Any arguments based upon his competency fail.

The claims based upon his alleged misunderstanding of the consequences of being a sex offender fail. The Plea Agreement states defendant shall be registered as a Tier III sex offender. The TIS Form verifies that defendant and counsel reviewed his sex offender registration information. This Court specifically went over this requirement with him during the colloquy. Defendant cannot now dispute an otherwise established fact: he was aware of his sex offender registration requirements when he entered the plea.

Defendant attempts to create a factual issue with regards to the special condition allowing him only supervised contact with his child. Defendant maintains he only agreed to a condition of unsupervised contact. A portion of the condition regarding contact with Matthew Starr was marked through and the final version stated, "No unsupervised contact w/defendant's son -

---

[17] *Edwards v. State*, 941 A.2d 1018, 2007 WL 4374237, *1 (Del. Dec. 17, 2007) (citing *Brady v. United States*, 397 U.S. 742, 751-52 (1970).

Matthew Starr." He contends the supervised contact language was inserted after he signed the plea agreement. The Court specifically reviewed with defendant the condition that he was to have no unsupervised contact with his son before he entered his plea.[18] The record clearly establishes that defendant agreed to this condition; he may not now attempt to create confusion on the matter by alleging the condition was modified from that to which he agreed.

Finally, his contentions he did not understand his rights and did not understand the plea agreement are factually meritless.

I turn now to the ineffective assistance of counsel claims. Before considering the claims, I set forth the legal framework for those considerations.

First, the claims must not be vague or conclusory; they must be clear and specific.[19] If a defendant makes a clear and non-conclusory, claim, then:

> To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy the familiar two-part test of *Strickland v. Washington*. FN 15 "In the context of a guilty plea challenge, *Strickland* requires a defendant to show that: (1) counsel's representation fell below an objective standard of reasonableness; and (2) counsel's actions were so prejudicial that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial." FN 16.
>
> FN 15 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).
>
> FN 16 *Somerville v. State*, 703 A.2d 629, 631 (1997) (internal quotation marks omitted) (citing *Albury v. State*, 551 A.2d 53 (1988)).[20]

Furthermore,

---

[18]Trans. at 12.

[19]*Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

[20]*Purnell v. State*, 2014 WL 4536558, *2 (Del. Sept. 12, 2014).

> *Strickland's* second prong requires the defendant to show how counsel's error resulted in prejudice. ... "Mere allegations of ineffectiveness will not suffice. A defendant must make specific allegations of actual prejudice and substantiate them." The "failure to state with particularity the nature of the prejudice experienced is fatal to a claim of ineffective assistance of counsel." In particular, a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." [Footnotes and citations omitted.].[21]

Defendant asserts numerous instances of ineffective assistance of counsel. No need exists to compare trial counsel's responses to defendant's contentions because, as will be explained below, I conclude each claim fails for a reason that does not involve resolving whether trial counsel's representation was effective. I turn to the claims below.

*** The Public Defender's office gave bad advice regarding the preliminary hearing.**

Defendant never specifies what this advice was, and consequently, the claim fails as conclusory.[22] Furthermore, he does not make any effort to explain how the outcome of the proceedings would have been different if he had had a preliminary hearing in either of the two cases.[23] The claim fails.

*** Trial counsel was ineffective for not requiring that DNA be taken from the victim. Defendant conclusively argues that if that had been done, a mitigating factor would have been established which would have resulted in the Court imposing a different sentence.**

---

[21] *Hoskins v. State*, 2014 WL 4722716, *3 (Del. Sept. 22, 2014).

[22] *Hoskins v. State*, *supra; Younger v. State*, *supra.*

[23] *Id.*

Defendant does not argue what the DNA tests would have shown, and the claim fails as conclusory.[24] Defendant also has failed to establish how any information from a DNA test would have resulted in the imposition of a lesser sentence than what he received.[25] This claim fails.

*** He was incorrectly informed about whether he was required to testify at trial if he testified at the suppression hearing. He would not have taken the plea if he had known he did not have to testify at trial.**

The Court discussed with defendant his right to testify or not and what the jury would be told if he decided not to testify.[26] Thus, the facts establish he knew he could have chosen not to testify. The claim is factually meritless. Alternatively, defendant fails to establish prejudice. Defendant's scenario where he believes he would not have felt compelled to testify is speculative. No one could have guaranteed the occurrence of that scenario. Thus, he cannot establish he would have chosen to go to trial rather than plead.[27] Failing to establish prejudice dooms this claim.

*** He was misinformed about his chances of winning at trial; in particular, he was told his confessions to the police would result in his convictions.**

This argument is conclusory, and consequently, fails.[28]

---

[24]*Id.*

[25]*Id.*

[26]Trans. at 8.

[27]*Albury v. State*, 551 A.2d 53, 60 (Del. 1988).

[28]*Hoskins v. State*, *supra; Younger v. State*, *supra.*

*** Defendant asked trial counsel to counter the plea offer, but trial counsel would not, saying there was no point in asking.**

Defendant cannot establish that a counter offer would have produced a better plea for him and thus, he cannot establish prejudice.[29] The claim fails.

*** Trial counsel was not "being a good counsel by encouraging defendant to take the plea deal."**

This claim is conclusory and fails.[30]

*** Defendant was not satisfied with trial counsel's representation, but the Court denied him new counsel and defendant was "trapped" with using trial counsel as his attorney.**

The record defies defendant's contention that he was not satisfied with his trial counsel, and the claim fails as factually meritless. Alternatively, the claim is conclusory.[31] Furthermore, defendant cannot, and does not attempt, to show how the outcome would have been different if he had had a different attorney.[32] This claim fails.

*** Trial counsel did not file a suppression motion as soon as defendant requested he do so.**

Trial counsel admits he did not file the suppression motion as soon as defendant asked for

---

[29] *Hoskins v. State, supra.*

[30] *Hoskins v. State*, *supra; Younger v. State*, *supra.*

[31] *Id.*

[32] *Id.*

it to be filed. Instead, trial counsel filed it soon after the first case review and 4 months before trial. The delay allowed trial counsel to review evidence before filing the motion so that he could assess the appropriateness of the motion. This action constituted effective assistance of counsel. In any case, defendant does not attempt to show that he would have gone to trial if the suppression motion had been filed at the time defendant asked for it to be filed. Defendant fails to establish prejudice, and the claim fails.[33]

*** Trial counsel did not contact defendant's witnesses.**

Defendant does not name the witnesses nor explain what they would have offered to his case so that he would have gone to trial. This vague claim fails.[34]

*** Trial counsel only saw defendant 2-3 times**.

This is a vague, conclusory claim.[35] Furthermore, defendant does not explain how more meetings would have resulted in his going to trial; thus, defendant fails to show prejudice.[36] The claim fails.

*** Trial counsel never reviewed with defendant all of the State's evidence against him.**

The record shows this contention to be untrue, and the claim fails as factually meritless. Alternatively, defendant does not detail what evidence he was not shown, and the claim fails as

---

[33]*Purnell v. State, supra.*

[34]*Hoskins v. State*, *supra; Younger v. State*, *supra.*

[35]*Id.*

[36]*Purnell v. State, supra.*

being conclusory.[37] Furthermore, defendant does not establish how, had he been shown that evidence, he would have gone to trial. Defendant fails to show prejudice, and the claim fails.[38]

*** Trial counsel never obtained background paperwork on defendant from DFS and Delaware Guidance.**

Defendant does not explain what the background information would have established. Thus, this is a conclusory claim and it fails for that reason.[39] Furthermore, defendant does not explain how that information would have led him to go to trial. Defendant fails to show prejudice.[40] The claim fails.

*** Trial counsel never obtained the victim's medical and mental health records.**

Defendant fails to state what this information would have shown and, again, the claim fails for vagueness.[41] Furthermore, defendant fails to establish how that information would have resulted in his going to trial. Defendant fails to establish prejudice.[42]

*** Trial counsel failed to have defendant undergo a psychological examination which would have produced information that would have led to the Court giving him a**

---

[37]*Hoskins v. State*, *supra; Younger v. State*, *supra.*

[38]*Purnell v. State, supra.*

[39]*Hoskins v. State*, *supra; Younger v. State*, *supra.*

[40]*Purnell v. State, supra.*

[41]*Hoskins v. State*, *supra; Younger v. State*, *supra.*

[42]*Purnell v. State, supra.*

lesser sentence.

Defendant's arguments that his sentence could have been mitigated are befuddling. He received the exact sentence for which he bargained. Before defendant entered the plea, the Court told defendant that it would be imposing the sentence he received. If defendant had any qualms about the sentence to be imposed or thought he could have received a lesser sentence, then he should have refused to admit to the crimes and foregone the plea. Furthermore, when defendant had the opportunity to raise his past history with the Court, he specifically refused to provide any mitigating information. His decision to enter the plea without a psychological evaluation and while being fully aware of the sentence to be imposed was knowing and deliberate. He cannot show prejudice.[43] The claim fails.

*** Trial counsel never obtained records from DFS regarding an investigation into his and the victim's mother's parenting.**

Defendant fails to state what these records would have shown and the claim fails for vagueness.[44] Furthermore, defendant fails to establish how the information in these records would have resulted in his going to trial. Defendant fails to establish prejudice, and the claim fails.[45]

*** Trial counsel did not explain what being a Tier III sex offender meant.**

The record disputes this contention. Furthermore, the Court explained this information to

---

[43] *Id.*

[44] *Hoskins v. State*, *supra; Younger v. State*, *supra.*

[45] *Purnell v. State, supra.*

him. Thus, the claim fails as being factually meritless. In any case, defendant has failed to show that knowing this information would have resulted in his going to trial. Thus, the claim fails because defendant failed to establish prejudice.[46]

*** Trial counsel did not tell him that Tier III is the highest level.**

The record disputes this contention. Furthermore, the Court explained this information to him. In any case, defendant has failed to show that knowing this information would have resulted in his going to trial. The claim fails because defendant did not establish prejudice.[47]

*** Trial counsel did not tell him he would have to wear an ankle bracelet.**

Wearing an ankle bracelet is a statutory requirement.[48] Defendant has failed to show that knowing this information would have resulted in his going to trial. Defendant fails to establish prejudice and the claim fails.[49]

*** Trial counsel did not tell him that he would have to complete the Family Problems Program and he would not be flowed down out of Level 5 supervision until he completed it**.

The record belies this contention; furthermore, the Court explained this information to defendant before he took the plea. This claim is factually incorrect and the Court denies it.

*** Trial counsel misinformed him about his good time credits and how much time he would actually be serving.**

---

[46] *Id.*

[47] *Id.*

[48] 11 *Del. C.* § 4121(u).

[49] *Id.*

Good time credits are awarded pursuant to statute.[50] There are two types of credits a defendant can earn: statutory and meritorious. Good time credits can be earned at different rates and for different reasons. Importantly, they can be lost.[51] No one can guarantee a defendant on the front end of a sentence what his release date will be based upon good time credits. As a result of the plea, defendant was looking at a sentence of between 12 years to 55 years. Defendant agreed in the TIS Form as well as during the colloquy that there were no other promises to him, and this representation includes any promise regarding any potential future reduction in his sentence. He is bound by his representations.[52] He cannot now assert there was some promise regarding good time credits. The Court will not consider this meritless argument within the context of an ineffective assistance of counsel claim.

*** Trial counsel did not make him aware of the existence of other types of pleas besides guilty; i.e., nolo contendre or a *Robinson*[53] plea**.

Defendant cannot establish that the State would have been willing for defendant to enter a nolo contendre or *Robinson* plea.[54] Furthermore, defendant has failed to establish prejudice because he has not, and cannot, show that even if he had entered a *Robinson* or nolo contendre

---

[50]11 *Del. C.* § 4381.

[51]11 *Del. C.* §4382; 10 *Del. C.* § 8805.

[52]*Purnell v. State, supra,* at *3.

[53]*Robinson v. State*, 291 A.2d 279 (Del. 1972).

[54]*See State v. Dombrosky*, 1999 WL 743672, *1 (Del. Super. Aug. 10, 1999), *app. dism.*, 741 A.2d 1026 (Del. 1999) (State of Delaware required a "straight guilty plea" and would not allow a *Robinson* or nolo contendre plea).

plea, then he would have obtained a better outcome than he did. Defendant fails to establish prejudice and the claim fails.[55]

Defendant's plea process was thoughtful and thorough. Much time was spent with him insuring he understood every aspect of the case against him and what the guilty plea would mean for him. After the fact, he spews forth numerous claims, apparently hoping the sheer number of assertions will get him somewhere. The claims are conclusory and insubstantial. It was reasonable for him to plead guilty to the three charges and significantly limit his jail time rather than risk being tried on 11 sex charges involving a child, be convicted thereon, and be sentenced to several life sentences plus more. Because of the nature of the charges against him and the evidence against him, defendant is incapable of showing that the outcome of his case could have been better than it was if he had not pled guilty. His ineffective assistance of counsel claims fail.

Finally, I turn to the final factors defendant asserts entitle him to a vacation of the plea:

* A letter from the victim's mother can be read to say that she set him up.

* His confession to the police was coerced.

* His confession was obtained after he requested counsel.

* The State tampered with the video and interview transcripts.

* The rape test was negative.

* There was an absence of tests on the victim's throat.

* No one would give him a lie detector test.

* There were no DNA tests on the victim and himself.

* He never knew what a preliminary hearing was.

---

[55] *Purnell v. State, supra*, at *2.

Defendant's guilty plea constitutes a waiver of all constitutional trial rights and the right to challenge any alleged violations of his constitutional rights or to challenge any of the evidence that would have been presented against him at trial or, in other words, to raise any errors or defects preceding the entry of the plea.[56] Thus, defendant waived the foregoing claims and/or the ability to pursue arguments regarding the foregoing by pleading guilty.

No need exists for a hearing in this matter as the record and law clearly dictate the resulting decision on defendant's pending motion.

For the foregoing reasons, the motion for postconviction relief fails. Postconviction counsel's motion to withdraw is moot.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

cc: Prothonotary's Office
John W. Donahue, Esquire
Robert H. Robinson, Jr., Esquire

[56] *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).