

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

STATE OF DELAWARE,            )  
  )  
                                  v.                    )            I.D. # 1209000778  
  )  
  )  
JOHNAS J. ORTIZ,                )  
  )  
                                  Defendant.        )

Date Submitted: July14, 2014  
Date Decided: October 30, 2014

**ORDER**

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

Scott, J.

1. On March 21, 2013, Defendant, Johnas Ortiz (“Ortiz”) pled guilty to one count of Resisting Arrest and one count of Possession of Drug Paraphernalia<sup>1</sup>. On March 21, 2013, the defendant was also sentenced. On the Resisting Arrest count, he was sentenced to 1 year at Level 5, suspended after 6 months at supervision Level 5 for balance to be served at supervision Level 3. On the Possession of Drug Paraphernalia count, he was sentenced to 6 months at supervision Level 5, suspended for 1 year at supervision Level 3. Probation is concurrent to the Resisting Arrest charge.<sup>2</sup>

2. On April 3, 2013, Ortiz filed the current motion for postconviction relief.<sup>3</sup> In this motion, Ortiz raises three grounds for postconviction relief. Specifically, he claims that (1) he received ineffective assistance of counsel; (2) he was denied the right to present/subpoena witnesses; and (3) his confession and guilty plea were coerced. On April 15, 2013, Ortiz filed an Amendment to the Postconviction Relief. In this Amendment, Ortiz raised two additional grounds: (1) he entered into an unfulfilled plea agreement; and (2) there was a breach of agreement by the State.

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<sup>1</sup> Plea Agreement, Docket Item (“D.I.”) 16.

<sup>2</sup> Sentence Order, D.I. 17.

<sup>3</sup> Mot. for Postconviction Relief, D.I. 18.

3. 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> Rule 61(i) imposes four procedural imperatives: 1) the motion must be filed within one year of a final order of conviction; 2) any ground for relief that was not asserted in a prior post conviction proceeding is thereafter barred; 3) any ground for relief must have been asserted at trial or on direct appeal as required by the court rules; 4) any ground for relief must not have been formerly adjudicated in any proceeding leading to the judgment of conviction.<sup>5</sup> The Postconviction Relief Motion is timely filed and not repetitive. The Court will, therefore, consider the merits of the Motion.

4. Ortiz's second and third claims are procedurally barred under Rule 61(i)(3).<sup>6</sup> This rule bars claims for relief that were not asserted in the proceedings below unless the defendant can show cause and prejudice for his failure to raise the issue. In his second claim, Ortiz argues that he was

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<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).

<sup>6</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

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

“denied the right to present/subpoena witnesses due to manipulation of process.” This was an issue that Ortiz was aware of before he pled guilty. He had the right to subpoena and/or call witnesses to present his case at trial. Ortiz did not choose either of these options. Rather, he chose to waive those rights and plead guilty. Because Ortiz fails to show cause and prejudice for his failure to raise this issue before he pled guilty, this claim is procedurally barred.

5. Ortiz’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, Ortiz 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>7</sup> The guilty plea form also indicates that the penalty for Resisting Arrest is 0 to 1 year incarceration and the penalty for Possession of Drug Paraphernalia is 0 to 6 months that there is no minimum mandatory sentence. Ortiz signed the form acknowledging that he understood the penalty range for Resisting Arrest and Possession of Drug Paraphernalia. In the absence of clear and convincing evidence to the contrary, Ortiz is bound

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<sup>7</sup> Truth in Sentencing Guilty Plea Form, D.I. 16.

by his answers on the guilty plea form and by his testimony at the plea colloquy.<sup>8</sup>

6. Ortiz also makes a claim of ineffective assistance of counsel. To prevail on this claim, Ortiz 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>9</sup> The first prong requires Ortiz 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>10</sup> There is a strong presumption that counsel’s conduct was professionally reasonable.<sup>11</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>12</sup>

7. On the truth-in-sentencing guilty plea form, Ortiz indicated that he was fully satisfied with defense counsel’s representation, that defense

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<sup>8</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>9</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

<sup>10</sup> *Id.* at 687-88, 694.

<sup>11</sup> *Albury v. State*, 551 A.2d 53, 59 (Del.1988).

<sup>12</sup> *Id.* at 697.

counsel fully advised him of his rights and that he understood all of the information contained on the form. There is nothing in the record to support Ortiz's contention that he wanted to go to trial or that his counsel failed to represent Ortiz's intentions at that time. In return for pleading guilty to one count of Resisting Arrest and one count of Possession of Drug Paraphernalia, the State *nolle prossed* all the remaining charges. Ortiz clearly benefited from pleading guilty. Because Ortiz fails to make the requisite showing under *Strickland*, his claim is denied.

8. Ortiz's Amended motion raises the grounds of an unfulfilled plea agreement and a breach of agreement by the State. Pursuant to the plea agreement, the State recommended that the Court sentence Ortiz within the statutory guidelines for Resisting Arrest and Possession of Drug Paraphernalia. The Court accepted the plea agreement and sentenced Ortiz accordingly. For these reasons, the Court finds that counsel's conduct did not fall below the reasonable level of professional assistance.

9. On December 5, 2013, Ortiz was sentenced for violating his probation to 1 year Level 5 suspended after 120 days, with no probation to

follow.<sup>13</sup> Ortiz has completed his sentence and has been discharged from incarceration on the case before this Court.<sup>14</sup>

For the reasons discussed above, Ortiz'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.**

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<sup>13</sup> Violation of Probation Sentence. D.I. 34.

<sup>14</sup> See Order: Motion for Reconsideration of Sentence is Denied....Moot After 12-5-13 Sentencing to L5 with No Probation to Follow for a Violation of Probation. D.I. 33.