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

STATE OF DELAWARE	)	
	)	
v.	)	Cr. ID No. 1309006247
	)	
MARK HUMBERTSON,	)	
	)	
Defendant.	)	

Date Submitted: August 21, 2015
Date Decided: October 9, 2015

Upon Defendant's Motion for Postconviction Relief
DENIED

Upon Defendant's Motion for Discovery and Inspection
DENIED

MEMORANDUM OPINION

Julie Finocchiaro, Deputy Attorney General, Department of Justice, Attorney for the State of Delaware.

Mark Humbertson, self-represented litigant.

Rocanelli, J.

On September 10, 2013, Defendant Mark Humbertson was arrested for escaping from the custody of the Department of Corrections after having been convicted by the Superior Court of Kent County and for other serious criminal conduct. On October 28, 2013, Defendant was indicted on fifteen charges. Counsel was appointed to represent Defendant ("Defense Counsel").[1] On April 21, 2014, with the assistance of Defense Counsel, Defendant pled guilty to six of the fifteen charges, including five violent felonies.[2] The Court ordered a presentence investigation. On July 18, 2014, the Court sentenced Defendant on the six charges to a total of thirty-seven (37) years at Level V, suspended after fourteen (14) years.

Defendant's Asserted Grounds for Postconviction Relief

On May 4, 2015, Defendant filed a Motion for Postconviction Relief ("PCR Motion") and an accompanying Motion for Appointment of Rule 61 Counsel ("Motion for Rule 61 Counsel") as a self-represented litigant.[3] Defendant's Motion for Rule 61 Counsel was denied by Order dated July 27, 2015.[4] In

[1] Bradley V. Manning, Esquire was appointed as counsel for Defendant.
[2] Defendant pled guilty to one count of Escape After Conviction; two counts of Burglary Second Degree; one count of Reckless Endangerment in the First Degree; one count of Possession of a Firearm During the Commission of a Felony; and one count of Possession of a Deadly Weapon During the Commission of a Felony.
[3] Defendant filed his Motion for Appointment of Counsel on January 15, 2015. However, the Court advised that Defendant must first file a motion for postconviction relief before the Court would consider Defendant's Motion for Appointment of Counsel. D.I. #17.
[4] Specifically, the Court held that Defendant did not meet the standard set forth in Super. Ct. Crim. R. 61(e)(2) for appointment of postconviction relief counsel where Defendant's motion did

Defendant's PCR Motion, Defendant argues ineffective assistance of Defense Counsel, as follows: (1) Defense Counsel's alleged failure to investigate Defendant's record of mental disorders; (2) Defense Counsel's alleged failure to inform the Court of Defendant's mental disorders and prescribed medications; and (3) Defense Counsel's alleged assumption that Defendant was competent to accept and enter a guilty plea.

Procedural Bars to Postconviction Relief

Before addressing the merits of a motion for postconviction relief, this Court must consider the procedural requirements of Rule 61(i).[5] Rule 61(i)(1) requires a motion for postconviction relief be filed within one year after the judgment of conviction is final. Defendant was sentenced on July 18, 2014, and filed his PCR Motion on May 5, 2014. Therefore, Defendant's PCR Motion is not time-barred and will be considered on the merits.

Standard of Review

Defendant's motion to withdraw his guilty plea on the grounds of ineffective assistance of counsel is governed by Rule 32(d), which provides that after a sentence has been imposed, the "plea may be set aside only by motion under Rule

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not "set[] forth a substantial claim that the movant received ineffective assistance of counsel in relation to the plea of guilty or nolo contendere" or present any exceptional circumstances that warrant appointment of counsel.

[5] *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

61."[6] Defendant must establish the plea "was either 'not voluntarily entered or was entered because of misapprehension or mistake' as to his legal rights."[7] However, because the basis of Defendant's PCR Motion is ineffective assistance of counsel, the two prong test established in *Strickland* applies to Defendant's claims.[8]

Ineffective Assistance of Counsel Claims

To satisfy *Strickland*, the movant must demonstrate (1) that Defense Counsel's representation fell below an objective standard of reasonableness,[9] and (2) that Defense Counsel's errors prejudiced the defendant.[10] In considering the first prong, there is a strong presumption that Defense Counsel's actions were professionally reasonable.[11] In considering the second prong, the movant must show "that there is a reasonable probability that, but for Defense Counsel's unprofessional errors, the result of the proceeding would have been different."[12] Failure to prove either prong renders the claim insufficient.[13]

1. **Defendant cannot establish ineffective assistance of Defense Counsel with respect to investigation or disclosure of Defendant's mental disorders.**

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[6] Super. Ct. Crim. R. 32(d).
[7] *Albury v. State*, 551 A.2d 53, 58 (Del. 1988) (quoting *State v. Insley*, 141 A.2d 619, 622 (Del. Super. 1958)).
[8] *Id.* (citing *Hill v. Lockhart*, 474 U.S. 52, 58 (1985) ("The two-part test which was articulated in *Strickland* has specifically been held to apply to guilty plea challenges based on a claim of ineffective assistance of counsel.").
[9] *Strickland v. Washington*, 466 U.S. 668, 688 (1984).
[10] *Id.* at 694.
[11] *Id*. at 688.
[12] *Id*. at 694.
[13] *Id.* at 700.

Defendant contends that Defense Counsel was ineffective because he failed to investigate and then inform the Court of Defendant's mental disorders and prescribed medications. Defendant's claim is inconsistent with the record. In an affidavit, Defense Counsel states that he and Defendant had "numerous discussions about [Defendant's] mental health history . . . . [And] [n]othing during our conversations or [Defendant's] case history led [counsel] to suspect that [Defendant] was not competent to assist with his own defense, stand trial or enter a guilty plea."[14] Indeed, in December 2013, Defense Counsel requested Defendant be evaluated by a psycho-forensic evaluator. Defendant was evaluated on February 28, 2014, and Defense Counsel shared the evaluation results with the State as part of plea discussions.[15] Accordingly, where Defense Counsel appropriately requested that Defendant be evaluated and properly shared the subsequent report, Defendant has failed to establish that Defense Counsel's representation fell below an objective standard of reasonableness or that Defendant was prejudiced so as to satisfy either prong of *Strickland*.

2. Defendant cannot establish ineffective assistance of Defense Counsel with respect to Defendant's Guilty Plea.

Although Defendant contends that Defense Counsel improperly assumed Defendant was competent to enter a guilty plea, Defendant does not offer evidence

[14] Aff. of Defense Counsel ¶ 1 (July 10, 2015).
[15] Aff. of Chief Deputy of Public Defender's Office ¶¶ 3–6 (June 17, 2015).

to support this claim. To the contrary, the record evidence establishes that Defendant's waiver of his constitutional trial and appellate rights was knowing, intelligent, and voluntary.

Pursuant to Superior Court Criminal Procedural Rule 11(c), the Court addressed Defendant personally in open court. During Defendant's plea colloquy, Defense Counsel represented to the Court that he believed Defendant to be "entering this plea knowingly, intelligently and voluntarily."[16] Moreover, as mentioned above, Defense Counsel submitted an affidavit providing that throughout the various discussions with Defendant about his mental health, "[n]othing . . . led [Defense Counsel] to suspect that [Defendant] was not competent to assist with his own defense, stand trial or enter a guilty plea."[17]

While the Court addressed Defendant in open court, the Court determined that Defendant understood the nature of the charges to which the plea was offered, the mandatory minimum penalty of seven years provided by law, and the maximum penalty of seventy-eight years.[18] The Court explained to Defendant the trial rights Defendant waived by pleading guilty.[19] Defendant acknowledged in open court that he understood the rights he was waiving.[20] When asked, Defendant

[16] Plea Colloquy at 5.
[17] Aff. of Defense Counsel ¶ 1 (July 10, 2015).
[18] Plea Colloquy at 8.
[19] Plea Colloquy at 6.
[20] Plea Colloquy at 7, 9.

stated that he had no questions for the Court or for Defense Counsel.[21] Defendant also acknowledged in open court that he had time to discuss the plea offer with Defense Counsel.[22] Finally, Defendant completed and signed a guilty plea form, which acknowledged that Defendant was pleading guilty freely and voluntarily.

The Supreme Court of Delaware has held that defendants are "bound by those statements" made during the plea colloquy and on guilty plea forms "in the absence of clear and convincing proof to the contrary."[23] Defendant has not provided any evidence sufficient to satisfy the "clear and convincing" standard required by Delaware law to make a showing that his plea was involuntary. Accordingly, Defendant has not established ineffective assistance of counsel under either prong of *Strickland*.

Defendant's Motion for Discovery and Inspection

On July 29, 2015, Defendant filed a Motion for Discovery and Inspection as a self-represented litigant. Rule 61 does not contain a specific provision allowing Defendant to receive discovery. However, the Court possesses "inherent authority under Rule 61 in the exercise of its discretion to grant particularized discovery for good cause shown."[24] In allowing discovery, the Court will not allow a Defendant "to go on a fishing expedition through the government's files in hopes of finding

[21] Plea Colloquy at 8-9.
[22] Plea Colloquy at 7, 9.
[23] *Krafchick v. State*, 100 A.3d 1021, *2 (Del. 2014); *Smith v. State*, 571 A.2d 788 (Del. 1990).
[24] *State v. Jackson*, 2006 WL 1229684, *2 (Del. Super. Ct. May 3, 2006)

some damaging evidence."[25] In order to determine whether a Rule 61 discovery request should be granted, the court must determine whether the Defendant has presented a compelling reason for the discovery.[26] Defendant has failed to demonstrate a compelling reason for the discovery of the requested evidence. Indeed, Defendant has not plead *any* reason for the requested evidence.

Conclusion

Defendant is not entitled to discovery in connection with his request for postconviction relief. Moreover, Defendant's claims for postconviction relief are without merit and Defendant has not established ineffective assistance of counsel per the test set forth in *Strickland*.

NOW, THEREFORE, this 9th day of October, 2015, Defendant Mark Humbertson's Motions for Discovery and Postconviction Relief are hereby DENIED.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

[25] *Id.* (*citing Deputy v. Taylor*, 19 F.3d 1485, 1493 (3d Cir. 1994)).
[26] *Dawson v. State*, 673 A.2d 1186, 1198 (Del. 1996) (materials requested "[were] not discoverable under a good cause standard because [defendant] has shown no compelling reason for their discovery"); *see also State v. Cabrera*, 2008 WL 3853998, *4 (Del. Super. Ct. Aug. 14, 2008).