IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	:	
	:	Case No. 1207010588
v.	:	In and For Kent County
	:	
ROMONE V. ALLEN,	:	
	:	
Defendant.	:	

ORDER

Before the Court is Defendant Romone Allen's ("Allen") motion for postconviction relief under Delaware Superior Court Criminal Rule 61. Allen argues the problems discovered in 2014 in the Office of the Chief Medical Examiner ("OCME") require that his drug conviction be vacated. Allen argues that the State failed to provide *Brady*[1] material, in the form of impeachment evidence, prior to entry into the plea agreements. Allen argues that if he had known of the problems with the OCME, he may have negotiated a more favorable plea agreement or gone to trial.

Misconduct at the OCME came to light in 2014. On January 14, 2014, Tyrone Walker was on trial in this Court for drug dealing charges.[2] During trial, an evidence envelope was presented to an officer to confirm that the substance in the envelope was the substance found on the Defendant at the time of arrest. When the officer opened the envelope, the relevant drugs were missing.[3] This sparked an investigation into the practices of the OCME resulting in a finding of multiple cases of pilfering

---

[1] *Brady v. Maryland*, 373 U.S. 83 (1963).

[2] *State v. Brinkley*, 2015 WL 867097, at *1 (Del. Super. Feb. 6, 2015).

[3] *Id.*

drugs by employees for their own personal use.[4] Due to the revelation and subsequent investigation, "[t]he State has brought charges against persons in the chain of custody in many of the pending cases. The Court ruled that there was evidence of pilfering or stealing of drugs by a person or persons for their own use."[5] However, in *Brown v. State* the Supreme Court of Delaware confirmed:

> The situation at the OCME is, to be sure, disturbing and regrettable. But to date, the investigation has yielded no indication that the OCME scandal involved the planting of false evidence to wrongly convict criminal defendants. Rather, it has mostly consisted of instances where employees stole evidence that they knew to be illegal narcotics for resale and personal use. That is, that misconduct occurred because the drugs tested by the OCME were in fact illegal drugs desired by users.[6]

The cocaine and marijuana seized from Allen was sent to the OCME for testing during the period when misconduct was still ongoing. However, there has been no claim or evidence to suggest that Allen's guilty plea was conditioned on the OCME report. Allen does not claim that the seized drugs were not what they were claimed to be, but rather claims that had he known of the misconduct in the OCME, he would have negotiated a better plea or gone to trial.

Allen participated in a colloquy before this Court during which he was carefully questioned about the factual basis for his plea. He freely acknowledged the illicit nature of the drugs as well as his guilt. The record reflects that there was a

---

[4] *Id.*

[5] *State v. West*, 2014 WL 7466714, at *1 (Del. Super. Dec. 16, 2014) (citing *State v. Irwin*, 2014 WL 6734821 (Del. Super. Nov. 17, 2014)).

[6] *Brown v. State*, 108 A.3d 1201, 1202-03 (Del. 2015).

factual basis for the plea and that Allen understood the plea and its consequences, including potential sentences. While accepting his plea, Allen knowingly, intelligently, and voluntarily waived his rights, including any complaints about the chain of custody of the drug evidence.

The Supreme Court of Delaware has addressed cases involving misconduct at the OCME. In *Brown v. State* the Court held:

> We agree with the State that evidence of the OCME investigation did not affect the validity of Brown's guilty plea and that Brown is not entitled to a new trial. In *United States v. Ruiz*, the United States Supreme Court held that the "Constitution, in respect to a defendant's awareness of relevant circumstances, does not require complete knowledge of the relevant circumstances, but permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor." Therefore, the "Constitution does not require the [State] to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant," because a defendant who pleads guilty decides to forgo "not only a fair trial, but also other accompanying constitutional guarantees" and "impeachment information is special in relation to the fairness of a trial, not in respect to whether a plea is voluntary."[7]

The Court went on to say:

> In this case, Brown admitted that he was guilty of possessing and dealing heroin. The plea colloquy reflects that Brown knowingly, voluntarily, and intelligently pled guilty. By pleading guilty, Brown gave up his right to trial and his right to learn of any impeachment evidence. Brown is bound by the statements he made to the Superior

[7] *Id.* at 1205-06 (citing *United States v. Ruiz*, 536 U.S. 622, 623 (2002)).

> Court before his plea was accepted, and *Ruiz* prevents him from reopening his case to make claims that do not address his guilt, and involve impeachment evidence that would only be relevant at trial.[8]

Thus, under the Court's holding in *Brown*, "[w]hen a defendant like [Allen] has admitted in his plea colloquy that he possessed [cocaine and marijuana] and intended to sell it, the OCME investigation provides no logical or just basis to upset his conviction."[9]

In *Brown*, the Court limited its holding in a footnote with the following explanation:

> As in *Ruiz*, the impeachment evidence that came to light after Brown pled guilty and was sentenced did not go to his actual innocence or affect the voluntariness of his plea. . . . [O]ur decision is limited to the case before it and fact patterns like it, and that if materially different situations emerge, they must be dealt with on their precise facts. For example, where a defendant entered a reluctant, but fully informed, no contest or guilty plea to lesser charges with no prison sentence to avoid the risk of a lengthy prison sentence on more serious charges, while proclaiming his factual innocence and expressing incredulity that the substance he claimed was legal had tested to be illegal narcotics, a later revelation that evidence planting had occurred in the relevant police department and that the defendant had been one of the victims of that misconduct, that situation could raise distinct considerations from those in this case, where the defendant freely admitted that he possessed illegal drugs.[10]

---

[8] *Id.* at 1206.

[9] *Id.* at 1202.

[10] *Id.* at 1206 n.30.

Allen also makes a due process argument that his plea was involuntary under *Brady v. United States*[11] because he was unaware of the OCME problem when the plea was entered. As the Supreme Court of Delaware noted in *Aricidiacono v. State*, a guilty plea is considered involuntary under *Brady* "if it is 'induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes).'"[12] As in *Aricidiacono*, Allen has "submitted no evidence to suggest a natural interference that any misconduct at the OCME (or lack or knowledge of that conduct) coerced or otherwise induced him to falsely plead guilty."

Allen makes no claim of actual innocence. The mere existence of the ongoing scandal at the OCME does not *ipso facto* create a colorable claim that there was a miscarriage of justice nor does it create a strong inference that Allen is actually innocent. Finally, without specific facts like those referenced in the *Brown* footnote, the situation at the OCME does not warrant a finding of actual or presumptive involuntariness of the guilty plea. Allen has the burden to show clear and convincing evidence to contradict each of the admissions made to the Court.[13] He failed to do so and is therefore bound by his knowing, voluntary, and intelligent representations to the Court.

---

[11] *Brady v. United States*, 397 U.S. 742 (1970).

[12] *Aricidiacono v. State*, 125 A.3d 677, 679 (Del. 2015) (quoting *Brady,* 397 U.S. at 755).

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

Accordingly, the Court will not vacate Allen's guilty plea and therefore his Rule 61 motion is summarily **DISMISSED**.

IT IS SO ORDERED.

/s/ William L Witham, Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Jason C. Cohee, Esquire
Elizabeth McFarlan, Esquire
J. Brendan O'Neill, Esquire
Nicole M. Walker, Esquire
Elliot Margules, Esquire