

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

STATE OF DELAWARE,)	
)	
)	
v.)	ID#: 1102019188
)	
JOSHUA N. JONES,)	
Defendant.)	

Submitted: December 20, 2012
Decided: March 27, 2013

ORDER

**Upon Defendant’s Motion for Postconviction Relief –
*SUMMARILY DISMISSED.***

1. On October 31, 2011, Defendant pleaded guilty to rape first degree. During the plea colloquy, Defendant personally assured the court, twice, he was “in fact” guilty. Defendant also assured the court, orally and in writing, that no one had threatened, forced or promised him anything to get him to enter the plea. Further, both the paperwork, which Defendant told the court had been reviewed with him “line-by-line,” and the court, itself, told Defendant “the best” he could hope for at sentencing “is a sentence of twenty-five years, and it could be as much as [] life.” Finally, Defendant assured the court, orally and in writing, that his plea was “voluntary.” Now, Defendant claims his lawyer let him down.

2. Defendant's admissions made sense. According to the affidavit of probable cause, Defendant videotaped himself receiving oral sex from a young child. While Defendant's face could not be seen in the video, he was otherwise recognizable. And, when the victim's relative confronted him, he confessed. The relative also had Defendant's written admission. Defendant's admissions of guilt, therefore, were consistent with the State's evidence.

3. After a presentence investigation, Defendant was sentenced on February 3, 2012, to 35 years in prison followed by many years of probation at decreasing levels. The sentence was worse than Defendant hoped for, but far less than it might have been. A life sentence was, indeed, possible.

4. Defendant did not file a direct appeal concerning either his plea or sentence. Before filing this motion for postconviction of relief, however, Defendant asked the sentencing judge for a sentence reduction, which was denied by the sentencing judge on April 12, 2012. As explained below, this motion for postconviction relief seems intended more to achieve that sentence reduction than the guilty plea's vacation and trial on the merits.

5. On November 14, 2012, Defendant filed a timely motion for postconviction relief under Superior Court Criminal Rule 61. The prothonotary

properly referred the matter.¹

6. In his words, Defendant claims, with little elaboration:

- [I] was never given Discovery packet of evidence (Rule 16) - (Lawyer says it was stolen from him);
- Lawyer didn't object to attack on character at sentencing;
- Lawyer threatened me with more time and harsher charges to scare me into sighning [sic] plea;
- Had me sign a blank plea and told me I would only get 15 yrs [sic];
- Lawyer did not use moneys effectively [sic] to assist me;
- Hired a psychiatric evaluator who did not know what he was doing and messed up the report several times for additional moneys.

7. For present purposes, the court will assume that all of Defendant's claims are factually correct. In reality, that is a highly dubious assumption. But, even if the claims are true, Defendant is not entitled to postconviction relief.

8. Defendant's third and fourth claims, that his lawyer threatened him and had him sign a blank plea, concern the plea's regularity. They should have been brought to this court's attention when the court repeatedly asked Defendant if his

¹ Super. Ct. Crim. R. 61(d)(1).

plea was not knowing or voluntary. Accordingly, those claims are procedurally barred.² The “interest of justice” exception³ is not implicated because the plea was in Defendant’s best interest and Defendant’s claims are confounded by what he told the court before it accepted his plea.

9. In his motion, Defendant does not claim that he lied to the court when he admitted the crime. Nor does Defendant argue his sentence would have been less if he had gone to trial. And, Defendant does not ask to face trial now. As explained below, were Defendant to face trial on the full indictment, his situation would probably end-up far worse. Again, Defendant wants to obtain a lesser sentence here.

10. As mentioned above, Defendant does not argue that but for his lawyers failings, Defendant would have not pleaded guilty, as he did. Moreover, Defendant does not argue that but for his lawyer’s failings, the sentence would be less. As presented above, had the jury and the sentencing judge seen the video and heard the victim’s relative testify, Defendant would surely have been convicted not only of rape, but of all the other serious sex crimes he was facing at trial.

² Super. Ct. Crim. R. 61(i)(3).

³ Super. Ct. Crim. R. 61(i)(5).

11. It bears special mention that, as to the claim that Defendant's lawyer did not object to an attack on Defendant's character at sentencing, it is unclear what Defendant expected his lawyer to say that might have helped. More importantly, as mentioned above, Defendant filed a motion for sentence reduction that gave him the opportunity to make his points about his character and anything else to the sentencing judge. Nevertheless, Defendant's motion for reduction of sentence was denied.

12. In summary, to prevail on an ineffective assistance of counsel claim, not only must Defendant show that his lawyer's work was substandard, but Defendant must also show that but for the lawyer's inadequacy, Defendant would not have pleaded guilty, or, at least, his sentence would have been better.⁴ Here, Defendant cannot make the required showing of prejudice. Had Defendant gone to trial, he probably would have been convicted of not only the charge he pleaded guilty to, but a host of other serious, sex crimes. Then, his sentence probably would have been much worse. Hence, it cannot be said that the alleged ineffectiveness of Defendant's counsel made a difference. And, Defendant has unsuccessfully taken his case for sentence reduction to the sentencing judge.

⁴ See *Strickland v. Washington*, 466 U.S. 668, 688-94 (1984).

After review of the motion and record, for the foregoing reasons, Defendant's motion for postconviction relief filed on November 14, 2012 is **SUMMARILY DISMISSED**. The Prothonotary shall notify the Defendant.

IT IS SO ORDERED.

/s/ Fred S. Silverman
Judge

PC: Prothonotary (Criminal Division)
Sarita R. Wright, Deputy Attorney General
Joshua N. Jones, Defendant