

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

STATE OF DELAWARE,)	
)	
v.)	ID#: 1101004755
)	
MICHAEL L. CHURCH,)	
Defendant.)	

ORDER

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

1. Instead of going to trial on September 20, 2011, Defendant pleaded guilty to continuous sexual abuse of a child, and sexual abuse of a child by a person in a position of trust. The prosecution's evidence included DNA obtained from products of conception obtained from Defendant's 15-year old stepdaughter. Taking the victim's age and the DNA into account, the State's case was almost irrefutable.

2. Before it found Defendant's guilty plea knowing, voluntary and intelligent, the court conducted two colloquy's with Defendant. The plea's painstaking nature is presented in the order denying Defendant's motion to withdraw

guilty plea.¹ In summary, Defendant repeatedly admitted his guilt and Defendant was repeatedly warned that if the court accepted the plea and dismissed the jury panel, he would not be able to come back later and ask to withdraw the plea.

3. On November 21, 2011, after the immediate threat of trial and life in prison had passed, Defendant filed the above-mentioned motion to withdraw guilty plea. While the motion was pending, Defendant, without leave, filed supplemental pleadings.

4. On February 16, 2012, the court denied Defendant's motion to withdraw guilty plea. On February 27, 2013 Defendant moved for reconsideration, which the court denied on March 2, 2012.²

5. On March 9, 2012, Defendant was sentenced to 22 years in prison, followed by probation at decreasing levels, which was five years more than the minimum/mandatory sentence. Defendant's sentence is far below the maximum.

6. Defendant did not appeal from the motion to withdraw guilty plea's denial, nor from his sentencing. But, on March 6, 2013, Defendant filed a motion for postconviction relief under Superior Court Criminal Rule 61.

¹ *State v. Church*, 2012 WL 1413978 (Del. Super. Feb. 12, 2012) (Silverman, J.).

² *State v. Church*, 2012 WL 1415763 (Del. Super. Mar. 2, 2012) (Silverman, J.).

7. The motion was properly referred,³ and upon preliminary review it appears subject to summary dismissal.⁴

8. The motion presents four grounds for relief with subparts, all couched in terms of ineffective assistance of counsel.

9. Summarizing, Defendant complains that his lawyer: failed to investigate and develop mitigating evidence; failed to discuss his sentencing strategy and the pre-sentence investigation; knew the plea was “not voluntary;” did not have a strategy for trial; and, did not “modify or suppress charges.”

10. On its face, Defendant’s motion for postconviction relief fails for several reasons. First, Defendant’s claim that his plea was involuntary should have been pursued through direct appeal. Second, the issues raised by Defendant concern things that happened before he pleaded guilty and, because his guilty plea was knowing, voluntary and intelligent, Defendant waived those claims when he pleaded guilty.⁵

11. Putting aside that when Defendant pleaded guilty, he assured the court it was, indeed, voluntary, Defendant must have known then, and when he was

³ Super. Ct. Crim. R. 61(d)(1).

⁴ Super. Ct. Crim. R. 61(d)(4).

⁵ *Johnson v. State*, 962 A.2d 917 (Del. 2008) (TABLE).

sentenced, that his lawyer failed on several points. None of this was something first discovered after Defendant's time for appeal had run. By the same token, Defendant has protested from the outset that he should only have been prosecuted for – or allowed to plead guilty to – rape in the fourth degree, statutory rape. That is a legal claim that should have been pursued through direct appeal.

12. At this point, as a matter of fact and law, Defendant's guilty plea was knowing, voluntary and intelligent. Thus, it cannot be said that Defendant's lawyer was ineffective because the lawyer "knew the plea was involuntary." Similarly, Defendant's conviction for the crimes to which he pleaded guilty is lawful.

13. Assuming Defendant's claims were not procedurally barred and his lawyer's effectiveness were subject to scrutiny under *Strickland v. Washington*,⁶ Defendant has only alleged prejudice in conclusory fashion.

14. As to prejudice, as mentioned, Defendant admitted guilt when he pleaded guilty. Defendant's original core claim was that statutory rape was the proper charge, not that he had misbehaved with a child. Over time, Defendant has developed a theory that the product of conception's DNA did not match his. Defendant acknowledges that a sample was taken from inside his mouth, but he believes the

⁶ 466 U.S. 668 (1984).

sample was contaminated with the victim's mother's DNA because he and the victim's mother were kissing intimately a few hours before he provided his sample. Besides being confused, Defendant's DNA theory is not supported by a flat denial of sexual activity with his stepdaughter. To the contrary, as mentioned above and discussed in earlier decisions, Defendant (and victim's mother) view what happened as statutory rape. Defendant's (and victim's mother's) pleadings heavily emphasize Defendant's non-threatening and non-forceful propensities. Defendant emphasizes that the 15-year old victim never felt threatened or coerced. In other words, Defendant's position, which was discussed during the plea colloquy, merely minimizes Defendant's misconduct. Defendant wants a better deal.

15. Further, as to prejudice, it remains true that if the case had gone to trial on September 20, 2011, Defendant probably would have been found guilty as charged or, at least, guilty of one unlawful sexual intercourse charge; Defendant certainly would have not been acquitted. If Defendant had not pleaded guilty, he would be serving at least one life sentence, probably more, rather than 22 years.

After reviewing the record, including transcripts of the plea colloquies and sentencing, for the reasons presented above, Defendant's March 12, 2013, motion for postconviction relief is **SUMMARILY DISMISSED**. Prothonotary shall

notify Defendant.

IT IS SO ORDERED.

Date: June 25, 2013

/s/ Fred S. Silverman
Judge

cc: Prothonotary (Criminal)
Annemarie Hayes, Deputy Attorney General
Dade D. Werb, Esquire
Michael L. Church, Defendant