

**IN THE SUPERIOR COURT OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,                    )  
  )  
                  v.                            )     ID No. 0612022950  
  )  
RYEKI STEWART                         )  
  )  
                  Defendant.             )

Submitted: April 5, 2013  
Decided: July 25, 2013

**On Defendant's Third Motion for Postconviction Relief – DENIED**

**ORDER**

Brian Ahern, Esquire, Department of Justice, 820 N. French Street, Wilmington, DE 19801.

Ryeki Stewart, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna, DE 19977. *Pro Se* Defendant.

**CARPENTER, J.**

On this 25<sup>th</sup> day of July 2013, upon consideration of Defendant's *Pro Se* Motion for Postconviction Relief, it appears to the Court that:

1. On March 19, 2013, Ryeki Stewart ("Stewart") filed a *Pro Se* Motion for Postconviction Relief, his third, pursuant to Superior Court Criminal Rule 61 ("Rule 61"). In this Motion, Stewart raises the following grounds for relief:

1) constitutional violations; 2) ineffective assistance of trial counsel; 3) ineffective assistance of appellate counsel; and 4) ineffective assistance of postconviction counsel. For the reasons set forth below, Defendant's Third Motion for Postconviction Relief is **DENIED**.

2. Following a stipulated trial<sup>1</sup>, Stewart was found guilty on June 19, 2007 of: 1) Trafficking Cocaine over 100 Grams; 2) Possession With Intent to Deliver Cocaine; 3) Maintaining a Vehicle; and 4) Resisting Arrest. As a result, Stewart was sentenced to a mandatory term of eight (8) years followed by a period of probation supervision. Stewart's conviction and sentence were affirmed on appeal to the Supreme Court in March 2008.

3. On April 16, 2008, Stewart filed a *Pro Se* Motion for Postconviction Relief, which was denied by this Court on September 24, 2008. The Supreme Court affirmed this Court's judgment on February 27, 2009.

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<sup>1</sup> A stipulated trial was held to preserve Stewart's right to appeal the Court's previous denial of the suppression motion.

4. On June 22, 2010, Stewart filed his second *Pro Se* Motion for Postconviction Relief, which was denied by this Court on July 27, 2010.

5. On March 19, 2013, Stewart filed the motion presently before the Court. However, prior to addressing the merits of any postconviction claim, the Court must determine whether the procedural requirements of Rule 61 have been met.<sup>2</sup> Specifically, any ground for relief raised by the Defendant that was not raised at trial or on direct appeal is procedurally barred, unless the Defendant shows both cause for relief and prejudice from a violation of his rights.<sup>3</sup> Additionally, any grounds for relief previously adjudicated, including those adjudicated in “the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding,” are barred unless “reconsideration of the claim is warranted in the interest of justice.”<sup>4</sup>

***A. Procedurally Barred Claims***

6. In his third Motion for Postconviction Relief, Stewart claims his 6th and 14th Amendment rights were violated. Specifically, Stewart claims that his 6th Amendment right to effective assistance of counsel was violated during the

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<sup>2</sup> See e.g., *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990) (citing *Harris v. Reed*, 489 U.S. 255, 265 (1989)).

<sup>3</sup> See Super. Ct. Crim. R. 61(i)(3).

<sup>4</sup> Super. Ct. Crim. R. 61(i)(4).

critical stages of plea negotiations at his first case review because his retained counsel, John Malik, did not appear and his surrogate counsel, Andrew Witherell, did not communicate to him the State's plea offer of four (4) years. Stewart contends that Witherell made no effort to communicate this plea offer to him and that, had Witherell informed him of the offer, he would have accepted the plea. Additionally, Stewart claims that his 14th Amendment right to due process was violated because the trial judge accepted the stipulated trial agreement without giving him a colloquy to ensure that he knew he was entering into the agreement voluntarily, intelligently, knowingly, and without false pretenses or coercion.

7. The Court notes that Stewart failed to raise these alleged constitutional violations on his direct appeal and, therefore, these claims are procedurally barred unless he can show cause or prejudice. First, the Court found nothing to suggest that a four (4) year plea was offered at his first case review. The only plea offer in Stewart's file was dated June 11, 2007, which he rejected. This plea offer provided that Stewart would agree to accept a minimum mandatory sentence of eight (8) years for Trafficking Cocaine over 100 Grams and one (1) year of probation for Resisting Arrest with a nolle prosequi entered on the remaining charges. Further, Stewart did not raise this issue previously. Moreover, because the pivotal issue in Stewart's case involved whether evidence would be

suppressed, it is logical for the Court to assume that it would not be in Stewart's best interest to accept a plea offer at his first case review, which occurred before the suppression hearing. As such, the Court finds that Stewart's claim regarding an uncommunicated plea offer is, at best, unsupported. Second, the trial judge did not err in failing to give him a colloquy as Stewart did not, in fact, plea to the indictment charges; instead, the parties stipulated to facts, which were presented to the trial court judge on which he based his decision. Specifically, the transcript of the stipulated trial provides:

“Mr. Malik:           Your Honor, this is the time that's scheduled for the stipulated trial in the case of State versus Ryeki Stewart.

You Honor, Mr. Ahern and I have discussed the case after the suppression hearing before Your Honor. And the way we indicated we would resolve it would be with a stipulated trial to preserve the issue for appeal rather than going through a formal trial, drawing the jury, and taking up the Court's time. So, I drafted a stipulated trial, and I've gone over that with Mr. Stewart, who is seated at the defense table to my left. In that stipulated trial, he acknowledges that he waives his right to be presumed innocent, and his other trial rights including a speedy and public trial, trial by jury, his right to hear and question, cross-examine witnesses, and his right to testify or not testify.

We indicated that we were doing this exclusively for the purpose of preserving Mr. Stewart's right to appeal, Your Honor's order denying the defense motion to suppress evidence that was handed down by the Court June 1st of this year, and I don't think there's anything else I need to put on the record.

We put down a general summary of the facts that we're asking the Court to consider and make a ruling based on those facts with respect to the four charges, which are Trafficking in Cocaine in excess of 100 grams, Possession with Intent to Deliver Cocaine, Maintaining a Vehicle For Keeping Controlled Substances, and Resisting Arrest. And we also acknowledge that there will be a three-year loss of driving privileges.

I've explained to Mr. Stewart that, if convicted, he would face up to a maximum of 44 years, 25 on the Trafficking, 15 on the Possession With Intent, three on the Use of a Vehicle, and one on Resisting Arrest; that's the maximum statutory sentence. And I've also advised him in exchange for this agreement the State is going to recommend that he receive the eight-year sentence, and that's what I'm going to recommend, as well, Your Honor, but I did explain to him the Court can exceed that.

Based on that, Your Honor, I think he's prepared to address the Court and answer any questions that Your Honor might have about the fact that he understands what he's doing and is doing so knowingly, intelligently, and voluntarily."<sup>5</sup>

As such, the Court finds that based upon Mr. Malik's statements, it is unlikely that Stewart was unaware of the actions he was taking and the rights he was waiving. Therefore, the Court finds that, absent the establishment of cause of prejudice, review of these otherwise procedurally barred issues is unwarranted.

8. The Court reiterates that a Rule 61 motion is intended to correct errors in the trial process—not to allow defendants unlimited opportunities to

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<sup>5</sup> *State v. Stewart*, ID No. 0612022950, Docket No. 24, at 3:10-5:8 (Del. Super. June 19, 2007) (Carpenter, J.) (STIPULATED TRIAL TRANSCRIPT).

relitigate their convictions. As such, the Court finds that Stewart's alleged constitutional violations are merely unsupported and conclusory claims, which essentially serve as a pretext to recast his ineffective assistance of counsel claim and file another Rule 61 petition.<sup>6</sup>

***B. Ineffective Assistance of Counsel***

9. Having addressed his procedurally barred claims, the Court now turns to Stewart's ineffective assistance of counsel claims. Specifically, Stewart cites *Martinez v. Ryan*<sup>7</sup> and claims that he was denied effective assistance of: 1) trial counsel, Witherell, during the critical stages of plea negotiations at his first case review; 2) appellate counsel, Malik, at the critical stages of his direct appeal and Rule 61 motion; and 3) postconviction counsel, Joseph Bernstein. The Court cannot agree.

10. Ineffective assistance of counsel claims are governed by the two-part test established in *Strickland v. Washington*<sup>8</sup>. Specifically, a defendant's claim of ineffective assistance of counsel is subject to a strong presumption that the representation was professionally reasonable.<sup>9</sup> In order to overcome this presumption, the defendant must establish that: 1) his trial counsel's efforts fell

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<sup>6</sup> See *State v. Gee*, 2011 WL 880851, at \*3 (Del. Super. Feb. 23, 2011).

<sup>7</sup> 566 U.S. at —, 132 S.Ct. (2012).

<sup>8</sup> 466 U.S. 668, 687 (1984); see also *Winn v. State*, 1998 WL 15002 (Del. Jan. 7, 1998).

<sup>9</sup> See *Winn*, 1998 WL 15002, at \*2.

below a reasonable objective standard; and 2) there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's unprofessional errors.<sup>10</sup> However, "mere allegations of ineffectiveness will not suffice."<sup>11</sup> Instead, "a defendant must make, and substantiate, specific allegations of actual prejudice."<sup>12</sup> Further, courts must evaluate defense counsel's conduct at the time of the trial in order to maintain the proper perspective and "eliminate 'the distorting effects of hindsight.'"<sup>13</sup>

11. Additionally, *Martinez* concerns the standard of review in federal *habeas corpus* proceedings.<sup>14</sup> Specifically, *Martinez* allows a federal *habeas* court to hear substantial claims of ineffective assistance of counsel at trial if, in the initial-review collateral proceeding in the state court, there was no counsel or counsel in that proceeding was ineffective.<sup>15</sup> Although *Martinez* does not apply to state court proceedings, this Court recently amended Rule 61 of its Rules of Criminal Procedure to provide that, effective May 6, 2013 and onward, "[t]he

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<sup>10</sup> See *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

<sup>11</sup> *Gattis v. State*, 697 A.2d 1174, 1178.

<sup>12</sup> *Id.* at 1178-79.

<sup>13</sup> *Id.* at 1178 (citing *Strickland*, 466 U.S. at 689).

<sup>14</sup> See *Martinez v. Ryan*, 566 U.S. at —, 132 S.Ct. 1309, 1311 (2012) ("Where under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal *habeas* court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.").

<sup>15</sup> See *id.*

court will appoint counsel for an indigent movant's first postconviction proceeding."<sup>16</sup>

12. Here, Stewart filed his Third Motion for Postconviction relief on March 13, 2013, which was prior to the effective date of this Court's Rule 61 amendment. However, even if the amended Rule were applicable, the Court would reach the same result. Here, Stewart was represented by Mr. Bernstein on his first Motion for Postconviction Relief and as such had counsel that may be mandated by *Martinez*. Further, Stewart previously raised ineffective assistance of counsel claims against Mr. Malik on both his first and second postconviction motions, which this Court held, respectively, did not meet the *Strickland* requirements and were procedurally barred. Moreover, Stewart neither explains why he failed to raise claims against Witherell or Bernstein on prior postconviction motions nor provides a reason now as to why he may have been precluded from doing so then. Therefore, Stewart's "conclusory ineffective assistance of appellate counsel claim is barred because he failed to raise it earlier and because he has failed to make any attempt to show how consideration of the claim is warranted in the interest of justice."<sup>17</sup> Additionally, Stewart "has failed to show the procedural bars are inapplicable pursuant to Rule 61(i)(5), as he has not

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<sup>16</sup> 2013 Del. D.O. 0015; *see also State v. Travis*, 2013 WL 1196332, at \*2 (Del. Super. Mar. 25, 2013).

<sup>17</sup> *State v. Jones*, 2013 WL 2152198, at \*3 (Del. Super. May 20, 2013) (citing Super. Ct. Crim. R. 61(i)(2)).

advanced any colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”<sup>18</sup>

As such, the Court finds that Stewart has failed to demonstrate how counsel during any stage of the litigation provided ineffective assistance of counsel.

Having found that Stewart’s claims for relief are without merit, the Defendant’s Third Motion for Postconviction Relief is hereby **DENIED**.

**IT IS SO ORDERED.**

/s/ William C. Carpenter, Jr.  
Judge William C. Carpenter, Jr.

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<sup>18</sup> *Id.* at \*3.