

INTRODUCTION

Defendant Bernard Woods (“Defendant”) pled guilty to Delivery of a Narcotic, Conspiracy Second Degree, Trafficking in Cocaine, Possession of a Deadly Weapon by a Person Prohibited and Possession of a Firearm During the Commission of a Felony, in violation of 16 *Del. C.* § 4751, 11 *Del. C.* § 521, 16 *Del. C.* § 4753A(a)(2), 11 *Del. C.* § 1448, and 11 *Del. C.* § 1447(a), respectively. This is Defendant’s third Motion for Postconviction Relief. Defendant has also filed a Motion for Appointment of Counsel, Motion for Evidentiary Hearing, and Motion for Expansion of the Record. These Motions have been supplemented by a series of letters and “Memoranda of Law,” filed by Defendant, all of which have been reviewed and considered by the Court. For the reasons stated below, all four of Defendant’s Motions are **DENIED**.

FACTUAL AND PROCEDURAL HISTORY

On October 29, 2007 Defendant was indicted for Delivery of a Narcotic, Possession of a Narcotic within 300 Feet of a Park, Conspiracy Second Degree, Trafficking in Cocaine, Possession with Intent to Deliver a Narcotic, Resisting Arrest, two counts of Possession of a Deadly Weapon by a Person Prohibited, and Possession of a Firearm During the Commission of a Felony.

Trial Counsel filed a Motion to Suppress and Motion for a *Flowers* Hearing on January 16, 2008 and January 17, 2008, respectively. Both hearings were scheduled for February 29, 2008. However, on February 28, 2008, Defendant entered a guilty plea to Delivery of a Narcotic, Conspiracy Second Degree, Trafficking in Cocaine, Possession of a Deadly Weapon by a Person Prohibited and Possession of a Firearm During the Commission of a Felony. Although Defendant was eligible to be sentenced as a habitual offender subject to a life sentence,¹ as part of the plea agreement, the State did not seek to have Defendant declared a habitual offender and capped its recommendation at a mandatory fifteen years of incarceration. Immediately following his plea, on February 28, 2008, Woods was sentenced to 29 years at Level V incarceration, suspended after 15 years for a period of drug treatment and probation. Defendant did not file a direct appeal with the Supreme Court of Delaware.

Defendant filed his first Motion for Postconviction Relief, *pro se*, on July 2, 2008. At that time, the Court requested and received an affidavit from trial counsel regarding Defendant's claims of ineffective assistance of counsel. Defendant's motion was denied by this Court on September 10, 2009. Defendant appealed and the judgment of the Superior Court was affirmed by the Supreme Court of

¹ Defendant had prior convictions dated January 15, 1992, and June 12, 2000, for Trafficking Cocaine.

Delaware on April 26, 2010.² On June 18, 2010, Defendant filed a second Motion for Postconviction Relief. This motion was denied by the Superior Court on July 7, 2010. The Supreme Court of Delaware affirmed on February 17, 2011.

DEFENDANT'S *THIRD* MOTION FOR POSTCONVICTION RELIEF

I. *Procedural Bars*

Prior to addressing the substantive merits of any claim for postconviction relief, the Court must first determine whether Defendant has met the procedural requirements of Superior Court Criminal Rule 61.³ If a procedural bar exists, then the claim is barred, and the Court should not consider the merits of the claim.⁴ Specifically, Rule 61(i) imposes four procedural imperatives: (1) the motion must be filed within three years of a final order of conviction; (2) any basis for relief must have been asserted previously in a prior postconviction proceeding; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules unless the movant shows prejudice to his rights or cause for relief; and (4) any basis for relief must not have been formally adjudicated in any proceeding.

² *Woods v. State*, 994 A.2d 745 (2010).

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁴ *Id.*

Defendant's claim is time-barred by Rule 61(i)(1) because it was filed more than three years after his conviction became final on February 28, 2011.⁵

Defendant's claims are also barred by Rule 61(i)(4) because the Superior Court has already addressed them in response to Defendant's previous motions for postconviction relief and found them to be without merit. To the extent that Defendant has refined these claims, they need not be reexamined because they have received "substantive resolution[s] at an earlier time."⁶ Conversely, if Defendant's claims are understood as different from those previously presented, they are barred by Rules 61(i)(2) and (3), which require Defendant's basis for relief to have been previously asserted.

II. *Defendant's Ineffective Assistance of Counsel Claim*

Defendant argues that the Rule 61(i) procedural bars can be overcome in this case because Defendant's claim falls within the exception set out in Rule 61(i)(5):

The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to a 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.

⁵ Defendant admits that the Rule 61(i)(1) procedural bar is applicable to his case. Defendant's Memorandum of Law in Support of Rule 61 Motion for Post-Conviction Relief, at 2 (May 15, 2014).

⁶ *Johnson v. State*, 612 A.2d 158 (Del. 1992).

The “miscarriage of justice” or “fundamental fairness” exception contained in Rule 61(i)(5) is a “*narrow one* and has been *applied only in limited circumstances*, such as when the right relied upon has been recognized for the first time after a direct appeal.”⁷ This exception may also apply to a claim of mistaken waiver of fundamental constitutional rights, such as rights to trial, counsel, confrontation, the opportunity to present evidence, protection from self-incrimination and appeal.⁸ Accordingly, when a petitioner puts forth a colorable claim of mistaken waiver of constitutional rights, Rule 61(i)(5) is available to him.⁹

Defendant argues that Rule 61(i)(5) is an available remedy because he has put forth a colorable claim of ineffective assistance of counsel. In order to prevail on an ineffective assistance of counsel claim, a defendant must meet the two-pronged *Strickland* test by showing that: (1) counsel performed at a level “below an objective standard of reasonableness” and that, (2) the deficient performance prejudiced the defense.¹⁰ In the context of a plea challenge, a defendant must establish that his counsel’s conduct was deficient and so prejudicial that there was

⁷ *Younger*, 580 A.2d at 555 (citing *Teague v. Lane*, 489 U.S. 288, 297-99 (1989)) (emphasis added).

⁸ *Webster v. State*, 604 A.2d 1364, 1366 (Del.1992).

⁹ *Id.*

¹⁰ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

a reasonable probability that, but for counsel's deficiencies, the defendant would not have taken a plea but would have instead insisted on going to trial.¹¹

Conclusory allegations are insufficient to establish a claim of ineffective assistance of counsel.¹² Trial Counsel's Affidavit, Defendant's signed Plea Agreement, the Truth-in-Sentencing Guilty Plea Form and the full colloquy before this Court, provide more than substantial evidence indicating that Defendant knowingly, voluntarily, and intelligently entered into the plea agreement.

This Court finds that Defendant's ineffective assistance claim does not meet the *Strickland* standard, nor does the record support Defendant's argument. Defendant repeatedly asserts that his plea was somehow based on fraud, but has not referred to any specific incidences of misconduct or otherwise provided a coherent explanation of his claim. Defendant implicitly claims that trial counsel hid mitigating evidence from Defendant, but fails to provide this Court with evidence, or any method upon which to judge the veracity of his claim.¹³ By pleading guilty, Defendant effectively waived any alleged errors or defects occurring prior to the entry of the plea.¹⁴ Defendant has failed to substantiate or

¹¹ *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

¹² *See Younger*, 580 A.2d at 556 (“[defendant] has made no concrete allegations of “cause” . . . and thus, does not substantiate to any degree such a claim.”).

¹³ Defendant's Memorandum of Law in Support of Rule 61 Motion 4-5.

¹⁴ *Alexander v. State*, 962 A.2d 256 (Del. 2008) (holding that a validly entered guilty plea constituted a waiver to raise post-conviction claims of any alleged errors or defects occurring prior to the entry of the plea).

make any evidentiary showing that he did not understand the nature or associated penalties of the charges to which he pled. Defendant fails to establish a violation of his Sixth Amendment right, and fails to establish that there was a miscarriage of justice because of a constitutional violation pursuant to Rule 61(i)(5).¹⁵

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief is **DENIED**.

APPOINTMENT OF COUNSEL

Defendant's Motion for Appointment of Counsel is made in reliance on Super. Cr. Crim. R. 61(e)(1). Rule 61(e)(1) was recently amended to provide that, effective May 6, 2013:

The court will appoint counsel for an indigent movant's first postconviction proceeding. For an indigent movant's second or subsequent postconviction proceedings, the court will appoint counsel only in the exercise of discretion and for good cause shown, but not otherwise.¹⁶

As this is Defendant's third Motion for Postconviction Relief, the Court will consider appointment of counsel only in the exercise of discretion and for good cause.¹⁷ There is no constitutional right to counsel in a postconviction proceeding

¹⁵ *State v. Condon*, 2003 WL 1364619 at *6 (2003).

¹⁶ Del. Super. Ct. Crim. R. 61(e)(1) *as amended by* 2013 DELAWARE COURT ORDER 0015 (D.O. 0015).

¹⁷ *State v. Miller*, 2013 WL 4135019, at *2 (Del.Super. 2013); *Morrissey v. State*, 2013 WL 2722142, at *2 (Del. 2013).

and, as such, an appointment of an attorney at the State's expense occurs only in exceptional circumstances.¹⁸

Defendant's Motion asserts that counsel should be appointed in this case because (1) Defendant is indigent and unable to afford counsel and (2) trial counsel was ineffective. As noted above, this Court finds Defendant's ineffective assistance of counsel claims to be without merit. Defendant has not satisfied the required burden of "good cause" and, therefore, Defendant's Motion for Appointment of Counsel is **DENIED**.

EVIDENTIARY HEARING

Defendant has requested an evidentiary hearing. This request is governed by Superior Court Criminal Rule 61(h):

- (1) *Determination by Court.* After considering the motion for postconviction relief, the state's response, the movant's reply, if any, the record of prior proceedings in the case, and any added materials, the judge shall determine whether an evidentiary hearing is desirable.
- (2) *Summary Disposition.* If it appears that an evidentiary hearing is not desirable, the judge shall make such disposition of the motion as justice dictates.

In support of this request, Defendant has simply restated his claims regarding ineffective assistance of counsel and the "fraudulent" nature of his conviction. As discussed above, Defendant's claims are without merit and fail to

¹⁸ *Floyd v. State*, 612 A.2d 158 (Del. 1992).

establish any value in the requested evidentiary hearing. Therefore, Defendant's Motion for an Evidentiary Hearing is **DENIED**.

EXPANSION OF RECORD

Defendant filed a Motion for Expansion of Record. Pursuant to Superior Court Criminal Rule 61(g)(1):

The judge may direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the motion. The judge may direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the motion.

As noted above, this Court has already obtained an affidavit from trial counsel. Defendant has not indicated what additional material should be included in the record. Neither has Defendant indicated how such unidentified materials would be "relevant to the determination of the merits of the motion." Therefore, Defendant's Motion for Expansion of the Record is **DENIED**.

IT IS SO ORDERED.

/s/ Vivian L. Medinilla
Judge Vivian L. Medinilla

cc: Prothonotary