

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

STATE OF DELAWARE	)	
	)	
v.	)	I.D. No. 1302014636
	)	
PEDRO J. TORRES	)	
	)	
Defendant	)	

Submitted: December 17, 2014  
Decided: March 3, 2015

On Defendant's Motion for Postconviction Relief.  
**SUMMARILY DISMISSED.**

**ORDER**

Jan A.T. Van Amerongen, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State

Pedro J. Torres, Wilmington, Delaware, *pro se*

COOCH, R.J.

This 3rd day of March, 2015, upon consideration of Defendant's First Motion for Postconviction Relief, it appears to the Court that:

1. Defendant Pedro J. Torres pled guilty in October 2013 to Assault in the Second Degree and Burglary in the Third Degree. Defendant was then sentenced as a habitual offender to a total of eleven years at Level V, suspended after eight years for three years at Level IV, suspended after three months for one year at Level II.<sup>1</sup>

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<sup>1</sup> See Sentence Order, D.I. #13 (Mar. 28, 2014). Defendant was sentenced as a habitual offender on the assault charge pursuant to 11 *Del. C.* § 4214(a). The first eight years of Defendant's Level V sentence is the minimum mandatory sentence on the assault charge.

2. Defendant filed the instant motion on November 19, 2014.<sup>2</sup> Defendant asserts one ground for relief in his motion, which is listed here *in toto*:

Effective Assistance of Counsel: Counsel was overwhelm[ed] d[ue] to his caseload. Therefor[e] counsel wasn't able to represent me to full ability. Was not prepare[d] for trial and failed to negotiate and proper plea deal that was favorable to the State or myself. Counsel was also effective by allowed me to sign a expire plea. The plea expire July 5, 2013.<sup>3</sup>

3. Defendant's Motion for Postconviction Relief is controlled by the recently amended Superior Court Criminal Rule 61.<sup>4</sup> Under Superior Court Criminal Rule 61(i), a Motion for Postconviction Relief can be potentially procedurally barred for time limitations, successive motions, procedural defaults, and former adjudications.<sup>5</sup> Before addressing the merits of this Motion for Postconviction Relief, the Court must address any procedural requirements of Rule 61(i).<sup>6</sup>
4. Rule 61(i)(1) provides that a motion exceeds time limitations if it is filed more than one year after the conviction is finalized, or if the motion asserts a newly recognized, retroactively applied right more than one year after it is first recognized.<sup>7</sup>
5. Rule 61(i)(2) provides that a motion is successive if it is the second or subsequent motion made under this Rule, and such successive motions are prohibited unless the pleading requirements of 61(d)(2)(i) or (ii) are met.<sup>8</sup>
6. Rule 61(i)(3) bars consideration any ground for relief "not asserted in the proceedings leading to the judgment of conviction," unless the

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<sup>2</sup> Although Defendant filed the instant motion on November 19, it was not docketed until December 15, 2014.

<sup>3</sup> Def.'s Mot. for Postconviction Relief at 3, D.I. #15 (Nov. 19, 2014).

<sup>4</sup> The most recent set of amendments to Super. Ct. Crim. R. 61 took effect on June 4, 2014.

<sup>5</sup> Super. Ct. Crim R. 61(i)(1)-(4).

<sup>6</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>7</sup> Super. Ct. Crim. R. 61(i)(1).

<sup>8</sup> See Super. Ct. Crim. R. 61(i)(2). For further discussion of the pleading standards articulated in the newly amended Rule, see *infra*.

movant can show “cause for relief from the procedural default” and “prejudice from violation of the movant’s rights.”<sup>9</sup>

7. Rule 61(i)(4) bars consideration of any ground for relief formerly adjudicated in the case, including “proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus hearing.”<sup>10</sup>
8. If any of the above procedural bars exist, the Court will not consider the merits of the claims unless the Defendant can show that the exception found in Rule 61(i)(5) applies.<sup>11</sup>
9. Rule 61(i)(5), as recently amended, provides that consideration of otherwise procedurally barred claims is limited to claims that the Court lacked jurisdiction, or claims that satisfy the new pleading standards set forth in 61(d)(2)(i) and (ii).<sup>12</sup> The new pleading standards require that the Motion either:
  - (i) Pleads with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted; or
  - (ii) Pleads with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant’s case and renders the conviction . . . invalid.<sup>13</sup>
10. This Court finds that Defendant’s Motion was timely filed and is not otherwise procedurally barred.<sup>14</sup> However, “[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings

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<sup>9</sup> Super. Ct. Crim. R. 61(i)(3).

<sup>10</sup> Super. Ct. Crim. R. 61(i)(4).

<sup>11</sup> Super. Ct. Crim. R. 61(i)(5).

<sup>12</sup> *Id.*

<sup>13</sup> Super Ct. Crim R. 61(d)(2)(i).

<sup>14</sup> The Supreme Court affirmed Defendant’s conviction in August of 2014 and the instant motion followed three months later. Defendant is within the one-year filing window articulated by the Rule.

in the case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified.”<sup>15</sup> A movant must support his or her assertions with ‘concrete allegations of actual prejudice, or risk summary dismissal.’”<sup>16</sup> Sufficiently developed allegations are required in support of all grounds for relief, including claims of ineffective assistance of counsel.<sup>17</sup> This Court “will not address Rule 61 claims that are conclusory and unsubstantiated.”<sup>18</sup>

11. Defendant alleges ineffective assistance of counsel, but does not set forth sufficient evidence to survive either prong of Strickland.<sup>19</sup> To successfully articulate an ineffective assistance of counsel claim in the context of a guilty plea, a claimant must demonstrate: 1) that counsel’s performance was deficient, and 2) “that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.”<sup>20</sup> To prove counsel’s deficiency, a defendant must show that counsel’s representation fell below an objective standard of reasonableness.<sup>21</sup> Moreover, a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.<sup>22</sup>
12. Defendant claims that trial counsel was ineffective because he failed to negotiate a favorable plea agreement and because he allowed Defendant to sign an expired plea agreement. Defendant sets forth no facts to support his contention that counsel failed to negotiate a favorable plea agreement. To the contrary, the record reflects that Defendant’s agreement to plead guilty to second degree assault and third degree burglary led to the dismissal of two weapons charges.

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<sup>15</sup> Super. Ct. Crim. R. 61(d)(5).

<sup>16</sup> *State v. Chambers*, 2008 WL 4137988, at \*1 (Del. Super. Aug. 25, 2008) (quoting *State v. Childress*, 2000 WL 1610766, at \*1 (Del. Super. Sept. 19, 2000)).

<sup>17</sup> See, e.g., *State v. Robbins*, 1996 WL 769219, at \*1 (Del. Super. Dec. 18, 1996).

<sup>18</sup> *State v. Owens*, 2002 WL 234739, at \*1 (Del. Super. Jan. 11, 2002).

<sup>19</sup> Though the Defendant’s argument consistently uses the term “effective assistance,” this Court finds it reasonable to assume that Defendant is trying to set forth an *ineffective* assistance of counsel claim, and will treat the claim as such.

<sup>20</sup> *Albury v. State*, 551 A.2d 53, 60 (Del. 1988) (citing *Hill v. Lockhart*, 474 U.S. 52 (1985)) (applying second prong of *Strickland* analysis in the context of a guilty plea); See also *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

<sup>21</sup> *Albury*, 551 A.2d at 60.

<sup>22</sup> *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

The two weapons charges that were dismissed would have carried substantial minimum mandatory Level V sentences, so it appears evident to this Court that Defendant received a substantial benefit from his plea agreement. Defendant has not set forth any facts to show that trial counsel made any error, and thus his conclusory argument cannot survive the first prong of *Strickland*.

13. Defendant's argument that counsel allowed him to sign an expired plea agreement is similarly without merit. All parties agreed upon the plea agreement at final case review and this Court accepted the agreed upon plea. Though the plea agreement may have on its face been expired, all parties agreed upon the plea agreement at final case review and this Court accepted the agreed upon plea. The fact that the plea paperwork may have contained a clerical error does not show that trial counsel committed an error that falls below an objective standard of reasonableness. Even assuming *arguendo* that this error did fall below an objective standard of reasonableness, Defendant has done nothing to show that but for any clerical error, there is a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial. This Court finds Defendant's claims are insufficient to survive the *Strickland* standard.
14. Despite the timeliness of Defendant's Motion, it plainly appears from the contents of the Motion that Defendant's claims should be summarily dismissed. This Court declines to address Defendant's Rule 61 claims further, consistent with Rule 61(d)(5). Summary Dismissal is the appropriate disposition of Defendant's Motion for Postconviction Relief.

Therefore, Defendant's Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

**IT IS SO ORDERED.**

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Richard R. Cooch, R.J.

oc: Prothonotary  
cc: Investigative Services