SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 The Circle, Suite 2
GEORGETOWN, DE 19947

July 31, 2015

Daniel E. Schultz
SBI # 006
SCI
P.O. Box 500
Georgetown, DE 19947

RE: State of Delaware v. Daniel Schultz
ID No: 0909007204

Dear Mr. Schultz:

This is my decision on your Motion for Postconviction Relief. You were charged with a variety of serious sexual offenses against two juvenile victims on October 1, 2009. You pled no contest to Rape in the Third Degree and Unlawful Sexual Contact in the First Degree at your final case review on April 7, 2010. I sentenced you to 25 years at Supervision Level 5, suspended after serving 15 years and the successful completion of the Family Problems Program for two years at Supervision Level 3. When reviewing a motion for postconviction relief, this Court first must consider the procedural requirements before addressing any substantive issues.[1] Superior Court Criminal Rule 61 has provided, since July 1, 2005, that a

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

motion for postconviction relief may not be filed more than one year after the judgment of conviction is final. Your conviction became final on May 7, 2010, or 30 days after you were sentenced because you did not file an appeal with the Supreme Court. You filed your Motion for Postconviction Relief on November 12, 2013, which is two-and-one-half years after the cut-off date. Thus, your Motion for Postconviction Relief is time-barred.

You allege that (1) your plea was coerced by a promise of a shorter sentence, (2) you were not provided discovery for your postconviction relief motion, and (3) your trial attorney was ineffective because he did not issue a subpoena for a witness that you wanted to testify at your trial. Your trial attorney and the prosecutor have submitted affidavits in this matter. Natalie S. Woloshin, Esquire, was appointed as counsel for your postconviction relief motion. She has filed a Motion to Withdraw as your counsel. Woloshin thoroughly reviewed the record and your motion and determined that not only are your claims without merit, but there are no potential meritorious grounds for relief in the record. Even though your motion is procedurally barred, I will briefly address your allegations.

I. Coerced Plea

You allege that you would not have accepted the plea offer from State if you had known that you would have been sentenced to 15 years at Supervision Level 5.

Instead, you allege that you were promised a sentence of eight years at Supervision Level 5. The Plea Agreement, Truth in Sentencing Guilty Plea Form, Plea Colloquy and your trial attorney do not support your allegation. The Plea Agreement, which you signed, stated that you and the State had agreed to a recommended plea that would have you serve 15 years at Supervision Level 5 and do the Family Problems Program, which is exactly the sentence you received. The Truth in Sentencing Guilty Plea Form, which you also signed, states that you were facing a potential sentence of 33 years at Supervision Level 5 for the two charges you pled to. Your trial attorney denies that you were ever promised a sentence of just eight years at Supervision Level 5. You were made aware that I was not bound by any recommended plea offer from you and the State.[2] Furthermore, when I asked you if you knew the maximum period of incarceration you faced for the charges you were pleading no contest to, you answered affirmatively.[3] If you did not understand the maximum sentence you were facing or the recommended sentence, then you should have spoken up. You did not. Your allegation is without merit.

II. Discovery

You allege that you were not provided with postconviction discovery. Rule 16

[2] Plea Colloquy at 2 (April 7, 2010).

[3] *Id.* at 3.

Discovery does not, as you suggest, pertain to postconviction motions. Rule 16(d)(3)(A) states that the "defendant may serve a request under subdivision (a) ***after the filing of an indictment or information but not later than ten days after arraignment or such other time ordered by the court***." (Emphasis added). Rule 16(c) provides a continuing duty to disclose additional evidence or material previously requested or ordered if it is discovered "***prior to or during trial***." (Emphasis added). Rule 16(a)(1)(D) and Rule 16(b)(1)(A) both make information discoverable that the parties plan to use "***as evidence in chief at the trial***." (Emphasis added). Nowhere in Rule 16 does the duty to provide discovery continue after the conviction has become final. Furthermore, in his affidavit, your trial attorney stated that you were provided with discovery during the course of your case and provided with full access to your file for purposes of your motion for postconviction relief.[4] Your allegation is without merit.

III. Ineffective Assistance of Counsel

You allege that your trial attorney was ineffective because he failed to subpoena your girlfriend as a witness for you at your trial. The United States Supreme Court has established the proper inquiry to be made by courts when deciding

[4] See letters from trial counsel to Daniel Schultz dated December 10, 2009, and February 26, 2010, wherein trial counsel provided Schultz with all of the discovery materials that were in his possession. (Exhibit B in trial counsel's affidavit).

a motion for postconviction relief.[5] In order to prevail on a claim for ineffective assistance of counsel pursuant to Superior Court Criminal Rule 61, the defendant must show: "(1) counsel's representation fell below an objective standard of reasonableness; and (2) counsel's actions were so prejudicial that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial."[6] Further, a defendant "must make and substantiate concrete allegations of actual prejudice or risk summary dismissal."[7] It is also necessary that the defendant "rebut a 'strong presumption' that trial counsel's representation fell within the 'wide range of reasonable professional assistance,' and this Court must eliminate from its consideration the 'distorting effects of hindsight when viewing that representation.'"[8]

You argue that your girlfriend would have provided testimony that would have helped your defense at trial. You never went to trial. You accepted the State's plea offer at final case review and with that came your waiver of the right to call witnesses for your defense. Moreover, there is no reason to believe that had your trial attorney been successful in subpoenaing your girlfriend that you would not have accepted the

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[5] *Strickland v. Washington*, 466 U.S. 668 (1984).

[6] *State v. Thompson*, 2003 WL 21244679 (Del. Super. April 15, 2003), *citing Strickland*, 466 U.S. 668 (1984).

[7] *State v. Coleman*, 2003 WL 22092724 (Del. Super. Feb. 19, 2003).

[8] *Coleman*, 2003 WL 22092724, at *2, *quoting Strickland*, 466 U.S. at 689.

State's plea offer. In his affidavit, your trial attorney stated that he made every effort to contact your girlfriend, and she not only refused to cooperate, but would not contact him in order to be interviewed.[9] In short, your girlfriend was uncooperative. Your girlfriend's unwillingness to cooperate does not render your trial attorney's representation ineffective. Your allegation is without merit.

CONCLUSION

Your motion is procedurally barred. While there are exceptions to the procedural time bar, you have not alleged any facts that would entitle you to the benefit of those exceptions. Moreover, there is no merit to the allegations in your motion. Therefore, I have **DENIED** your Motion for Postconviction Relief both procedurally and substantively. I will also grant your postconviction counsel's motion to withdraw.

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley
E. Scott Bradley

cc: Casey L. Ewart, Esquire
John P. Daniello, Esquire
Natalie Woloshin, Esquire

[9] Schultz's trial attorney's case activity record demonstrates that he attempted to contact Schultz's girlfriend, Amanda Norman, on four separate occasions.