

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

STATE OF DELAWARE)	
)	
)	
v.)	ID#: 1108008814
)	
DAVID I. REYNOLDS,)	
Defendant.)	

ORDER

**Upon Defendant’s Motion for Postconviction Relief –
*SUMMARILY DISMISSED***

1. On February 17, 2012, a jury convicted Defendant of robbery second degree. The verdict was taken by a judge who did not preside over the trial, but who nevertheless immediately imposed a fifteen month prison sentence followed by probation at decreasing levels.

2. At trial, Defendant was represented by court-appointed counsel. Defendant was represented by a different court-appointed attorney on direct appeal. Defendant’s appellate counsel, who specializes in appeals, filed a motion to withdraw under Supreme Court Rule 26(c). Although given the opportunity to do so, as called for by the rule, Defendant did not submit any claims for the Supreme Court’s consideration.

3. After reviewing the record carefully, the Supreme Court concluded that Defendant's appeal was wholly without merit and devoid of any arguably appealable issue.¹ Accordingly, Defendant's conviction was affirmed on October 18, 2012.

4. Defendant attempted to file a motion for postconviction relief on February 21, 2013. The court rejected the motion because it was not signed. Moreover, the court observed:

Also, if Mr. Reynolds expects relief, he will have to explain why he did not raise his claims during direct appeal. For example, the claim that he was not sentenced by the trial judge is an appeal issue.

On March 25, 2013, Defendant filed a signed motion, which the Prothonotary properly referred for preliminary consideration².

5. Defendant offers three grounds for postconviction relief under Superior Court Criminal Rule 61:

First, Defendant claims ineffective assistance of counsel because, 'Counsel should confer with client without delay as often as necessary, or to ascertain that potential defense, counsel violated DE Lawyer Rules

¹ *Reynolds v. State*, 55 A.3d 839 (2012) (TABLE).

² Super. Ct. Crim. R. 61(d).

1.1, 1.2, 1.3';

Second, Defendant 'did not understand questions asked during plea colloquy[.] Counsel should have promptly advised client of his rights. Counsel did not take legal action, to protect right to understand fully what client is accused [of].'

Third, 'Counsel refused to make pre-trial motions[,] over vital motions for preparations of defense. Defense counsel admitting with outburst that his client is guilty. Prejudice any defense statute, strategies[.]'

Fourth, Defendant was sentenced by a judge other than the trial judge. The sentencing judge "now is 'partial' not knowing facts presented, [trial judge's] opinion of sentence would be impartial, and in position to give fair and appropriate sentence, preserving and protecting due process clause.

6. Despite the court's specific, earlier caution, Defendant barely explains now why he did not raise any of his Rule 61 issues during his direct appeal.

At most, Defendant alleges:

On appeal issues [trial counsel] would not raise claims on appeal. Defending them[,] the constitution violations [,] as [minor.]

As presented above, however, Defendant's explanation for not raising the issues on direct appeal is flatly contradicted by the record. On appeal, Defendant was represented by an appeals specialist, not trial counsel. Furthermore, Defendant was

given the opportunity to personally raise his claims as provided in Supreme Court Rule 26(c).

7. While ineffective assistance of counsel claims are not addressed in Delaware on direct appeal, that does not mean that a defendant may withhold appellate issues during the direct appeal, only to raise them, couched as ineffective assistance of counsel claims, through a motion for postconviction relief. Thus, as far as Defendant's fourth claim for relief is concerned, Defendant has failed to show cause or prejudice for his failure to bring to the Supreme Court's attention during Defendant's direct appeal his claim based on the sentencing's procedural irregularity.

8. The court further observes that at this point, Defendant has served almost all of the Level 5 portion of the sentence. Re-sentencing on remand from the direct appeal might have made a difference. Now, at least as to the prison sentence, Defendant's point is nearly moot.

9. As for Defendant's postconviction relief claims, Defendant generally points to ways he believes trial counsel let him down. Those claims, however, do not include details, much less facts supporting the conclusion that any of the things Defendant complains about would have made a difference. For example, Defendant does not allege when trial counsel failed to confer with him,

much less how a conference would probably have resulted in Defendant's acquittal. By the same token, Defendant does not state what he did not understand during the plea colloquy, where, presumably, he rejected a plea and decided to exercise his right to trial by jury. As for his claim that he did not understand a question during the plea colloquy, the court observes that the mid-trial plea colloquy broke down when the court asked Defendant if he committed the offense. Defendant responded, "I did have an altercation with him, but [did] not to take property from him." The court followed-up by asking, "Did you take property from him?" Defendant reiterated, "No, I didn't." Defendant does not name a specific motion that trial counsel refused to file, and so on.

10. To some extent, Defendant's claims are at odds with each other. For example, while Defendant claims that trial counsel did not confer with him, Defendant also claims trial counsel refused to file motions on Defendant's demand. That implies consultation. But, it seems trial counsel disagreed with Defendant. In the end, trial counsel and Defendant appeared in court together several times, before and during the trial.

11. In light of the above, although they are timely, Defendant's first three claims for postconviction relief are conclusory. They fail to satisfy

either prong of the *Strickland v. Washington*'s³ test for ineffective assistance of counsel.

12. As for Defendant's fourth claim concerning the sentencing irregularity, review of that is not justified in the interests of justice. First, although Defendant does not have a terrible criminal history, he is not a first-offender. Thus, a fifteen month prison sentence for a robbery where the victim was held down is reasonable. Moreover, as to the interests of justice, Defendant has leave to file a motion for sentence reduction, which will be handled promptly. Meanwhile, Defendant's claims that the sentencing judge was "biased" and the trial judge is more favorably disposed toward Defendant are incorrect assumptions. They do not trigger "interests of justice" review, especially not now.

For the foregoing reasons, after preliminarily review, Defendant's motion for postconviction under Superior Court Criminal Rule 61, is **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

Date: April 23, 2013

/s/ Fred S. Silverman

Judge

oc: Prothonotary (Criminal Division)
pc: Kathleen M. Jennings, Deputy Attorney General
Reginald D. Jackson, Defendant

³ 466 U.S. 668 (1984).