

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

May 24, 2006

Wayde Curtis

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**Re: State of Delaware v. Wayde Curtis**  
**Cr.A. No. 04-04-0100, 0105 Def. ID No. 0403022466**

Date Submitted: February 13, 2006

Dear Mr. Curtis and Counsel:

This is my decision on the motion for postconviction relief filed by Wayde Curtis (“Curtis”). Curtis was charged with Possession of a Deadly Weapon During the Commission of a Felony, Aggravated Menacing, Assault in the Second Degree, Terroristic Threatening, Disorderly Conduct, Unlawful Imprisonment in the Second Degree, and two counts of Endangering the Welfare of a Child. The charges arose out of a domestic incident involving Curtis and his girlfriend, Robin Franklin, and her parents, Linwood and Virginia Franklin. Curtis pled guilty to Aggravated Menacing and Endangering the Welfare of a Child on October 20, 2004. The State of Delaware (the “State”) entered a *nolle prosequi* on the remaining charges. I sentenced Curtis to six years at supervision Level V, with credit for 80 days previously served, suspended for three years at supervision Level III. Curtis violated his probation and is now incarcerated. Curtis is seeking to

withdraw his guilty plea on the Aggravated Menacing conviction. This is his first motion for postconviction relief and it was filed in a timely manner. Therefore, there are no procedural bars to his motion for postconviction relief.<sup>1</sup>

The State was represented by Deputy Attorney General Melanie C. Withers (“Withers”). Curtis was represented by James D. Nutter (“Nutter”) and E. Stephen Callaway (“Callaway”). Callaway was initially assigned to represent Curtis, but due to personal reasons he was unable to attend either the initial case review on August 16, 2004, or the final case review on October 20, 2004. As a result, Nutter filled in for Callaway at the final case review. Curtis alleges that Nutter coerced him into accepting the plea and that Callaway failed to (1) file a motion to suppress; (2) file a motion to dismiss; (3) investigate the case and prepare a defense; and (4) argue that his arrest was illegal because it was based on false information.

In order to prevail on his claim of ineffective assistance of counsel, Curtis must show (1) that his attorneys’ actions fell below an objective standard of reasonableness; and (2) there exists a reasonable probability that, but for his attorneys’ errors, he would not have pled guilty.<sup>2</sup> Mere allegations of ineffectiveness will not suffice. Curtis must make specific allegations of actual prejudice and substantiate them.<sup>3</sup> Moreover, any review of his attorneys’ representation is subject to a strong presumption that their representation of Curtis was professionally reasonable.<sup>4</sup> Given the nature of the allegations made by Curtis, I have concluded that an evidentiary hearing is not

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<sup>1</sup>Younger v. State, 580 A.2d 552, 554 (Del. 1990).

<sup>2</sup>*Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984); *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

<sup>3</sup>*Wright*, 671 A.2d at 1356; *Younger v. State*, 580 A.2d 552, 555-56 (Del. 1990).

<sup>4</sup>*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

necessary.

### **1. Coercion**

Curtis alleges that Nutter coerced him into taking the plea. However, the record clearly refutes this allegation. Before accepting a guilty plea, the Court must ensure that the plea is voluntary. In order to do so, the Court must personally address the defendant in open court to make sure that the plea is voluntary and not the result of force or promises.<sup>5</sup> The Court is also required to make a record of the proceedings, which includes the Court's advice to the defendant, the inquiry into the voluntariness of the plea and an inquiry into the accuracy of the plea.<sup>6</sup> Part of the record will also be comprised of the forms completed by the defendant giving his plea.<sup>7</sup> The record before the Court indicates that Curtis entered into his plea agreement knowingly, intelligently and voluntarily. On the "Truth-In-Sentencing Guilty Plea Form" Curtis answered that he had freely and voluntarily decided to plead guilty to the charges. Curtis also answered that his attorney had not threatened or forced him to enter the plea. The following is an excerpt of the colloquy that I had with Curtis:

THE COURT: Did anybody force you to take this plea?

THE DEFENDANT: No.

THE COURT: Did anybody coerce you into taking this plea?

THE DEFENDANT: No.

THE COURT: Did anybody promise you anything in exchange for this plea?

THE DEFENDANT: No.

THE COURT: Did you commit the two offenses you are pleading guilty to?

THE DEFENDANT: Yes.

THE COURT: Are you satisfied with your attorney's representation of you?

THE DEFENDANT: Yes.

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

<sup>6</sup>Super. Ct. Crim. R. 11(g).

<sup>7</sup>*Id.*

THE COURT: Are you sure that this is what you wish to do today?  
THE DEFENDANT: Yes.

Curtis is bound by the answers that he gave on the Truth-in-Sentencing Guilty Plea Form and during the colloquy.<sup>8</sup> There is absolutely no evidence at all that Nutter coerced Curtis into taking the plea. Curtis only became disenchanted with the plea, and his attorneys' representation, after he violated his probation and was sent to prison.

## **2. Investigation**

Curtis argues that Callaway was ineffective because he did not prepare a defense. This argument is based on Curtis' belief that he was defending himself during the incident with his girlfriend and her parents. This was a very simple case. As such, there was, as a practical matter, little for Callaway to investigate. Curtis and three other people were involved in this incident. Callaway was, of course, aware of Curtis' version of the incident. He also had all of the discovery provided by the State. The other three people involved refused to speak to Callaway. Callaway obviously did all that he could have under the circumstances. Moreover, Curtis has not identified what Callaway should of done and how it would have made a difference. This allegation is non-specific and conclusory. As such, it is without merit.

## **3. Illegal Arrest**

Curtis argues that Callaway was ineffective because he failed to argue that the arrest was illegal because it was based upon allegedly false information. Curtis believes that Virginia Franklin gave false information to the police, which lead the police to arrest him. Whether or not she gave false information to the police was an issue to be presented and contested at trial. The fact that the

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<sup>8</sup>*State v. Adkins*, 2005 WL 1384307 (Del.Super.).

police acted on the information provided by Virginia Franklin does not make the arrest illegal unless they knew it was false.<sup>9</sup> Given that this was a domestic incident, I am not surprised that the people involved have a different view of what happened. However, having said that, there is simply no reason at all to believe that the police acted knowingly on false information. Callaway explained all of this to Curtis. There was nothing else for Callaway to do at time. This allegation is without merit.

#### **4. Motion to Suppress**

Curtis argues that Callaway was ineffective because he did not file a motion to suppress. However, Curtis does not identify what evidence should have been suppressed, why it should have been suppressed, and what difference it would have made. This allegation is non-specific and conclusory. As such, it is without merit.

#### **5. Motion to Dismiss**

Curtis argues that Callaway was ineffective because he did not file a motion to dismiss the charges due to an alleged lack of evidence. This argument is based on Curtis' belief that he was merely defending himself. The Grand Jury heard the case against Curtis and determined that he should stand trial and face the charges.<sup>10</sup> Thus, there was no basis for Callaway to seek to have the charges dismissed before trial.

### **CONCLUSION**

It is obvious that Nutter did not coerce Curtis into taking the plea. It is similarly obvious that

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<sup>9</sup>*State of New Jersey v. Pitcher*, 379 N.J. Super. 308, 318, 878 A.2d 8 (N.J. Super.Ct. App. Div. 2005).

<sup>10</sup>*Joy v. Superior Court*, 298 A.2d 315, 316 (Del. 1972) (“The indictment itself is in effect a finding of probable cause”).

Callaway's representation of Curtis did not fall below an objective standard of reasonableness. Everything that Curtis is complaining about now could have been raised by Callaway at trial. Curtis voluntarily decided not to do that and instead took the plea. He is now bound by that decision. Curtis' motion for postconviction relief is denied for the reasons set forth herein.

**IT IS SO ORDERED.**

Very truly yours,

E. Scott Bradley