

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

STATE OF DELAWARE,	)	
	)	
	)	
v.	)	ID No. 0503018656
	)	
	)	
SHERMAN ROBERTS,	)	
	)	
Defendant.	)	

*Upon Consideration of Motion for Postconviction Relief.*  
**DENIED.**

Date Submitted: February 23, 2006  
Date Decided: May 30, 2006

**ORDER**

This 24th day of April, 2006, upon Consideration of Defendant's Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61, it appears that:

1. Defendant, Sherman Roberts ("Roberts") has filed a *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. For the reasons set forth below, Robert's Motion is **DENIED**.

2. On April 18, 2005, Roberts was charged with Trafficking in Cocaine, Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance, Use of a Dwelling for Keeping Controlled Substances, Possession of Drug Paraphernalia, and Endangering the Welfare of a Child.
3. On October 6, 2005, Roberts plead guilty to Trafficking in Cocaine and Use of a Dwelling for Keeping Controlled Substances. Roberts was sentenced on October 6, 2005, as follows: (1) five years at Level five, suspended after serving two years, for eighteen months at Level three for Trafficking in Cocaine; and, one year at Level five, suspended for one year at Level three for Use of a Dwelling for Keeping Controlled Substances. The first two years at Level five was a mandatory sentence. Roberts did not file a notice of appeal in the Supreme Court.
4. Instead, Roberts filed a Motion for Modification of Sentence on December 28, 2005, and a Motion for Postconviction Relief on February 23, 2006.
5. Roberts contends that he should be afforded postconviction relief because of ineffective assistance of counsel. Specifically, Roberts alleges that his attorney advised him before his plea that his

sentence would be fast tracked and that the trafficking sentence would be concurrent with his violation of probation sentence. As support for his claim that counsel was ineffective, Roberts provides the Court with a letter dated September 14, 2005, from his attorney. In that letter counsel referenced Roberts' plea and noted that the trafficking sentence would run concurrently with his current sentence. Roberts claims that but for counsel's errors he would not have plead guilty.

6. Before addressing the merits of any postconviction relief claim, the Court must determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61.<sup>1</sup> To protect the integrity of Delaware's procedural rules, the Court will not consider the merits of a postconviction claim if defendant's claims are procedurally barred.<sup>2</sup> Rule 61(i) imposes four procedural imperatives: 1) the motion must be filed within one year of a final order of conviction; 2) any ground for relief that was not asserted in a prior postconviction proceeding is thereafter barred; 3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules; and 4) any ground for

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

<sup>2</sup> *Id.*

relief must not have been formerly adjudicated in any proceeding leading to the judgment of conviction. The Postconviction Relief Motion is timely filed and not repetitive, therefore, the Court will consider the merits of the Motion below.

7. Roberts' claim that his defense counsel was ineffective must fail under *Strickland v. Washington*,<sup>3</sup> and *Flamer v. State*.<sup>4</sup> The test for ineffective assistance of counsel is (1) whether counsel's representation fell below an objective standard of reasonableness, and (2) that there is a reasonable probability, that, but for counsel's unprofessional errors, the result of the proceeding would have been different.<sup>5</sup> Additionally, there is a strong presumption that legal representation is professionally reasonable.<sup>6</sup> To withdraw a plea after sentence has been imposed, the defendant must show either that his plea was not voluntarily entered or that it was entered because of misapprehension or mistake as to his legal options.<sup>7</sup> A defendant is bound by the statements he made on the signed Plea Form and during the in court colloquy unless he proves otherwise

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<sup>3</sup> 466 U.S. 668 (1984).

<sup>4</sup> 585 A.2d 736 (Del. 1990).

<sup>5</sup> *Strickland*, 466 U.S. at 688, 694.

<sup>6</sup> *Flamer*, 585 A.2d at 753-54.

<sup>7</sup> *Albury v. State*, 551 A.2d 53, 58 (Del. 1988).

by clear and convincing evidence.<sup>8</sup> On October 6, 2005, Roberts, freely and voluntarily, plead guilty to Trafficking in Cocaine and Use of a Dwelling for Keeping Controlled Substances. In doing so he signified that he understood the constitutional rights he was relinquishing. He indicated to the Court that he was satisfied with his attorney's representation and that his attorney had fully advised him of his rights. Moreover, Roberts indicated that he understood the minimum mandatory sentence was two years and that no one had made any promises to him. He specifically asserted that no one had promised him what his sentence would be. In the absence of clear and convincing proof, Roberts is bound by those statements. The Court finds that the letter dated September 14, 2005, from counsel to Roberts is insufficient evidence to prove that Roberts entered his plea because of misapprehension or mistake as to his legal options. While the letter is dated September 14, 2005, it is clear from its contents that it was in fact written after the entry of Roberts' guilty plea and after sentencing. Therefore, the attorney's statement that the trafficking sentence would run concurrently with his current sentence, while incorrect, occurred

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<sup>8</sup> *Smith v. State*, 1990 WL 1475, at \*1 (Del. Supr. 1990).

after Roberts had entered the plea. The letter does not reflect that Roberts relied on this statement or any other statements made by his attorney in pleading guilty.<sup>9</sup> Moreover, counsel explained in a letter to the Court dated March 13, 2006, that he was “absolutely certain” that he did not give Roberts incorrect or misleading information prior to his plea. There is, thus, no record support for Roberts’ contention that his plea was entered because of counsel’s representation that the sentence would be concurrent. In the absence of clear and convincing evidence to the contrary, Roberts is bound by his representations in the plea agreement and during the plea colloquy.<sup>10</sup>

8. The Court, therefore, **DENIES** Roberts’ Motion for Postconviction Relief for the above stated reasons.

**IT IS SO ORDERED.**

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Judge Calvin L. Scott, Jr.

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<sup>9</sup> *Carter v. State*, 2005 WL 3131583, at \*1 (Del. Supr.).

<sup>10</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).