SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

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

July 19, 2011

Antonio R. Bailey
SBI No. 0024
Sussex Correctional Institution
P.O. Box 500
Georgetown, DE 19947

RE: State of Delaware v. Antonio R. Bailey
Cr.A. No. S10-03-0680 et. al. - Def. ID No. 1003003200
Letter Opinion

Date Submitted: May 26, 2011

Dear Mr. Bailey:

This is my decision on your Motion for Postconviction Relief. You pled guilty to Possession With the Intent to Deliver Cocaine, Maintaining a Dwelling for Keeping Controlled Substances, and Conspiracy in the Second Degree on July 23, 2010. You were arrested after the Delaware State Police searched the home where you were living and found cocaine. The police had a search warrant to search your home. The search warrant was based upon information obtained by the police from two unidentified confidential informants. The information led the police to believe that you were selling illegal narcotics out of your home. I sentenced you to 15 years at Supervision Level 5, suspended after serving 10 years, followed by 18 months at Supervision Level 3. You filed your Motion for Postconviction Relief on September 22, 2010. This is your first motion for postconviction relief and it was filed in a timely manner.

You argue that (1) your attorney was ineffective because he represented one of the confidential informants who provided the information the police used to obtain the search warrant, (2) you did not receive the opportunity to be rehabilitated, (3) the prosecutors acted unprofessionally because they knew that your attorney represented the confidential informant, and (4) you were forced to plead guilty. The State was represented by Deputy Attorneys General John W. Donahue and Christopher M. Hutchinson. You were represented by Richard B. Lyle, Esquire. Donahue, Hutchinson, and Lyle filed affidavits in response to your allegations. Given the nature of your allegations, I have concluded that a hearing is not necessary.

I. Ineffective Assistance of Counsel

You argue that Lyle was ineffective because he should not have represented you and the confidential informant at the same time. The United States Supreme Court has established the proper inquiry to be made by courts when deciding a motion for postconviction relief.[1] 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."[2] Further, a defendant "must make and substantiate concrete allegations of actual prejudice or risk summary dismissal."[3] 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

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

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

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

consideration the 'distorting effects of hindsight when viewing that representation.'"[4] There is no procedural bar to claims of ineffective assistance of counsel.[5]

You argue that Lyle had a conflict of interest because he simultaneously represented both you and the confidential informant. You believe the confidential informant was Roy Nichols. Lyle did represent Nichols in an unrelated matter before he started representing you in this case. The search warrant did not state the names of the confidential informants. In order to resolve this matter, I instructed the prosecutors to obtain affidavits from the police officers involved in this case, identifying the confidential informants that they used to obtain the search warrant. I have reviewed the police officers' affidavits. Nichols was not one of the confidential informants. Thus, Lyle had no conflict of interest because Nichols was not the informant. There is no merit to this argument.

II. Rehabilitation

You argue that you should have been given the chance to get your life straightened out by doing some prison programs before being declared an habitual offender. You have a lengthy criminal history. You were convicted of (1) Burglary in the Second Degree on February 22, 1994, (2) Delivery of a Narcotic Schedule II Controlled Substance on March 11, 1996, (3) Aggravated Harassment on February 22, 2001, (4) Maintaining a Vehicle for Keeping Controlled Substances on June 22, 2004, and (5) Escape after Conviction on February 13, 2009. You pled guilty to Possession with the Intent to Distribute Cocaine, Maintaining a Dwelling for Keeping Controlled Substances, and Conspiracy in the Second Degree on July 23, 2010. The State did obtain an order declaring you to be an habitual offender, but it did not seek to sentence you as one. You had over 16 years to rehabilitate

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

[5] *Coleman*, 2003 WL 22092724, at *1, *citing State v. Johnson*, 1999 WL 743612, at *2 (Del. Super. Aug. 12, 1999).

yourself, but have not chosen to do so. Moreover, there is no requirement that you be given an opportunity for rehabilitation before you are declared an habitual offender. This argument is without merit.

III. Professional Misconduct

You argue that the prosecutors committed prosecutorial misconduct because they knew that Nichols was a confidential informant and represented by Lyle. As stated earlier, Nichols was not the confidential informant. This argument is without merit.

IV. Forced Plea

You argue that you were forced to plead guilty because (1) you could not afford to hire an attorney, and (2) you felt threatened by the State. Your argument is conclusory and without merit. First, you were appointed a competent and well-respected attorney to defend you and protect your rights. Whether Lyle was paid by the State or you is irrelevant. Second, the fact that the prosecutors informed you of their intent to pursue you as an habitual offender is not a threat. It is the State's prerogative to pursue you as an habitual offender based upon your commission of the necessary underlying felonies. Moreover, your argument that you were forced into pleading guilty is not supported by the answers you gave during your plea colloquy.[6]

Your Truth-In-Sentencing Guilty Plea Form has the following questions and answers on it:

> Have you freely and voluntarily decided to plead guilty to the charges listed in your written plea agreement?
> Answer: Yes.
>
> Has your lawyer, the State, or anyone threatened or forced you to enter this plea?
> Answer: No.

[6] Tr. at 6.

The following were your statements during the Plea Colloquy?

The Court:	Did anybody force you to take this plea?
The Defendant:	No.
The Court:	Did anybody promise you anything in exchange for it?
The Defendant:	No.
The Court:	Are you satisfied with Mr. Lyle's representation of you?
The Defendant:	Yes.
The Court:	Are you sure that this is how you wish to resolve the charges against you?
The Defendant:	Yes.

You are bound by your answers on the Truth-in-Sentencing Guilty Plea form and your statements made during the plea colloguy.[7] There is no doubt that you voluntarily pled guilty. This argument is without merit.

CONCLUSION

Your Motion for Postconviction Relief is DENIED.

IT IS SO ORDERED.

Very truly yours,

/S/ E. Scott Bradley

E. Scott Bradley

oc: Prothonotary's Office
cc: John W. Donahue, Esquire
Christopher M. Hutchison, Esquire
Richard B. Lyle, Esquire

[7] *State v. Denston*, 2003 WL 22293651, at *5 (Del.Super. Oct. 2, 2003).