

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

1 The Circle, Suite 2  
GEORGETOWN, DE 19947

May 13, 2015

**STATE MAIL – N443**

Ricky A. Marine  
SBI # 001  
JTVCC  
1181 Paddock Road  
Smyrna, DE 19977

***RE: State of Delaware v. Ricky A. Marine***  
***DEF. ID No: 0503001237***

Dear Mr. Marine:

This is my decision on your Motion for Postconviction Relief. You were charged in an Amended Information with 17 sexual offenses. You pled no contest to two counts of Rape in the Fourth Degree and one count of Continuous Sexual Abuse of a Child on January 17, 2006. You were sentenced on February 24, 2006, to 20 years at Level 5, suspended after serving 15 years at Level 5 for six months at Level 4 work release, followed by three years at Level 3. You allege that you received ineffective assistance of counsel during the pre-trial stage of your case, forcing you to take a plea offer from the State instead of going to trial. You filed your Motion for Postconviction Relief on February 20, 2015. You allege that the Amended

Information was deficient because it (1) charged the same offense multiple times, (2) did not contain an allegation of every fact necessary for conviction, (3) did not allege recklessness for the sexual contact counts, and (4) contains charges for conduct which an alleged victim said did not occur. Given the timing and straight-forward nature of your allegations, I have concluded that it is not necessary to appoint counsel for you or to have an evidentiary hearing.<sup>1</sup>

Your Motion for Postconviction Relief is controlled by the recently amended Superior Court Criminal Rule 61 because it was filed after the new rule took effect on June 4, 2014. Superior Court Criminal Rule 61(i)(1) provides that a motion for postconviction relief may not be filed more than one year after the judgment of conviction is final. You pled guilty on January 17, 2006, and were sentenced on February 24, 2006. You filed your Motion for Postconviction Relief on February 20, 2015, almost nine years after you were sentenced. Therefore, your Motion for Postconviction Relief is time-barred. The reasons you raise to excuse your untimely filing are inadequate because they are nothing more than a restatement of your basic allegation that you would not have pled no contest if your counsel had effectively represented you during the pre-trial phase.<sup>2</sup> Thus, I have denied your motion because

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<sup>1</sup> See Superior Court Criminal Rule 61(e)(2).

<sup>2</sup> Grounds for relief from the time bar include the court lacking jurisdiction, pleading with particularity that new evidence exists that creates a strong inference that the movant is

it is procedurally barred.

Moreover, in addition to being time-barred, your motion has no merit. The United States Supreme Court has established the proper inquiry to be made by courts when deciding a motion for postconviction relief.<sup>3</sup> 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.”<sup>4</sup> Further, a defendant “must make and substantiate concrete allegations of actual prejudice or risk summary dismissal.”<sup>5</sup> 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.’”<sup>6</sup>

### Multiplicity

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innocent in fact, and pleading with particularity that a new rule of constitutional law, made retroactively, renders the convictions invalid. (Superior Court Criminal Rule 61(i)(5)).

<sup>3</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

<sup>4</sup> *State v. Thompson*, 2003 WL 21244679 (Del. Super. April 15, 2003), *citing Strickland*, 466 U.S. 668 (1984).

<sup>5</sup> *State v. Coleman*, 2003 WL 22092724 (Del. Super. Feb. 19, 2003).

<sup>6</sup> *Coleman*, 2003 WL 22092724, at \*2, *quoting Strickland*, 466 U.S. at 689.

You argue that you pled no contest because you feared that your lawyer was not adequately protecting you from being charged with and convicted of multiple counts of the same offense. However, you do no more than allege this. The Double Jeopardy Clause in the Fifth Amendment of the United States Constitution protects against multiplicity, the charging of a single offense in more than one count of an indictment or information.<sup>7</sup> Your counsel had the Amended Information, the State's response to her request for a Bill of Particulars and the Child Advocacy Center tapes of the State's interviews with the alleged victims. All of this information shows that the charges against you were not just a repetition of the same thing. The Amended Information charged you with twelve counts of Rape in the First Degree, three counts of Unlawful Sexual Contact in the Second Degree, and two counts of Continuous Sexual Abuse of a Child. The twelve counts of Rape in the First Degree were broken down into six counts involving Robert Atallian and six counts involving Virgil Moxey. Three of the counts involving Atallian alleged that you put your penis into his mouth and the remaining three counts alleged that you put your mouth onto his penis. Three of the counts involving Moxey alleged that you inserted your penis inside his buttocks and the remaining three counts alleged you put your penis inside his mouth. There are two counts of Continuous Sexual Abuse of a Child. One count

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<sup>7</sup> *State v. Jones*, 2012 WL 2899007, at \*1 (Del. Super. June 28, 2012).

involved Atallian. The other count involved a third victim, Lorri Moxey. The three counts of Unlawful Sexual Contact in the Second Degree all involved Atallian. One count alleged that you placed your hand on his penis, while the other two counts alleged that you placed your hand and/or penis into his buttocks. The time frame of the allegations ran from March 3, 2000 to April 16, 2003. Thus, the Amended Information broke down the charges by criminal offense and victim and described the conduct that formed the basis of each charge. Moreover, your counsel had the State's Answer to her request for a Bill of Particulars. The State's answer further detailed the factual basis of the allegations against you and referred to the CAC interviews, which provided the details as well. You have not, in your motion, made an effort to identify which charges are based on the same conduct, leaving me with no choice but to conclude that your allegation is frivolous. Had you gone to trial, your counsel certainly would have been able to sort out the different counts of the Amended Information. In addition, you were further protected by this Court's practice of preparing jury instructions which, when necessary, relate similar counts to the alleged factual basis for each count. This effectively resolves any multiplicity and unanimity concerns. (See attached jury instructions.) This allegation is without merit.

#### Factual Allegations

You argue that the Amended Information does not contain an allegation of

every fact necessary for conviction. Once again, this is just a naked allegation. You have made no effort to analyze each count. Superior Court Criminal Rule 7(c) provides that the “indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged.” Rule 7(c) further provides that the indictment or information shall state for each count the statute which the defendant is alleged to have violated. I have reviewed the Amended Information and concluded that it meets these requirements. This allegation is without merit.

#### *Mens Rea*

You allege that the Amended Information is deficient because it did not include an allegation that the counts of Unlawful Sexual Contact were committed recklessly. I reviewed the Amended Information and concluded that each count alleges that your conduct was intentional, which is an element of Unlawful Sexual Contact, as well as every other charge against you. This allegation is without merit.

#### *Victim*

You allege that you were charged with a number of crimes even though the alleged victim of those crimes denied that you did anything to him. The statement that you are relying on is from a police report of an interview with Christopher

Moxey, who is now known as Robert Atallian.<sup>8</sup> The trouble with this allegation is that it is based on a previous investigation. Atallian was interviewed by Ralph Richardson at the CAC Center on April 14, 2003. Delaware State Police Detective Robert Hudson prepared a police report on April 18, 2003, stating that during Atallian's interview he stated that you did not do anything to him. Atallian was interviewed again by Ralph Richardson at the CAC Center on December 3, 2004. Based on this interview, Delaware State Police Officer Kelly Wells prepared a warrant for your arrest. In paragraph 12 of the affidavit attached to the arrest warrant, Detective Wells stated that during Atallian's interview at the CAC Center on December 3, 2004, he stated that you put your penis in his mouth numerous times a week. This was the arrest that led to the charges in the Amended Information. This allegation is without merit.

### Conclusion

I have concluded that your counsel's representation of you did not leave you with no choice but to plead no contest. Moreover, the transcript of your plea establishes that you entered the plea knowingly, intelligently, and voluntarily. The plea colloquy and the related paperwork clearly set forth the terms of the plea. Furthermore, you confirmed that by pleading no contest, you understood that you

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<sup>8</sup> This name change is discussed in the State's answer to the Bill of Particulars.

were giving up all of your trial rights, that no one had forced you to enter the plea, that the evidence against you was sufficient for a jury to find you guilty of the charges to which you pled, and that you were satisfied with your attorney's representation of you. You are bound by your answers in open court.<sup>9</sup> I have no reason to believe that your answers during the plea colloquy were not truthful. Therefore, I have denied your Motion for Postconviction Relief, both procedurally and substantively.

**IT IS SO ORDERED.**

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

ESB/sal

cc: Prothonotary  
Counsel

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<sup>9</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).