

INTRODUCTION

On April 16, 2015, Zakuon Binaird (“Defendant”) resolved his pending charges in this Court and pled guilty to Drug Dealing in Heroin and was sentenced to ten years at Level V, with credit for one hundred and ninety-seven days served, suspended after one year for decreasing levels of supervision. On June 3, 2015, Defendant filed a Motion to Withdraw Guilty Plea¹ arguing that the State committed a violation under *Brady v. United States*,² which rendered Defendant’s guilty plea involuntary. For the reasons set forth below, the Motion is **DENIED**.

FACTUAL AND PROCEDURAL HISTORY

On October 14, 2014, Defendant was arrested and charged with Drug Dealing, Aggravated Possession, and Possession of Drug Paraphernalia. Before Defendant decided to resolve his matter through a plea agreement, the State disclosed two police reports regarding the questionable conduct of the laboratory testing chemist as it related to Defendant’s case.³ Defendant was informed that the chemist, while counting bags of heroin, realized that one of the bags was missing.⁴ The chemist later found the bag of heroin in her coat pocket and reported the

¹ Superior Court Criminal Rule 32(d) provides that if a defendant’s Motion to Withdraw Guilty Plea “is made before imposition . . . of sentence . . . the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. At any later time, a plea may be set aside only by motion under Rule 61.” After sentencing, however, a defendant’s Motion to Withdraw Guilty Plea constitutes a collateral attack against a conviction and is, therefore, subject to the requirements of Superior Court Criminal Rule 61. Because Defendant’s Motion was filed after he was sentenced, it constitutes a collateral attack on his conviction and is, therefore, considered under Rule 61.

² *Brady v. United States*, 397 U.S. 742 (1970).

³ Def.’s Motion to Withdraw Guilty Plea, at 1 (June 3, 2015).

⁴ *Id.* at 2.

information to the police.⁵ The chemist was written-up for the conduct, was ordered to cease evidence analysis and handling, and she subsequently resigned from the Division of Forensic Sciences, formerly known as the Office of the Chief Medical Examiner (“OCME”).

On April 16, 2015, aware of this potentially exculpatory and/or impeachment evidence,⁶ and with the assistance of counsel, Defendant accepted a plea to one count of Drug Dealing in Heroin. At the conclusion of the colloquy, this Court accepted the plea and found that Defendant knowingly, intelligently, and voluntarily entered into the plea.⁷ Defendant does not raise procedural or substantive issues related to the plea colloquy.

After Defendant entered his plea, Defense counsel learned that the same chemist had actually been written up for mishandling evidence on three occasions, including the one pertaining to Defendant’s case.⁸ On June 3, 2015, Defendant filed the instant Motion to Withdraw Guilty Plea, asserting a due process violation under *Brady* because the State failed to disclose this evidence. Specifically, Defendant argues that the conduct of the chemist *in the two unrelated instances* qualifies as *Brady* material that should have been imputed upon the State because

⁵ *Id.*

⁶ *Id.*

⁷ Plea Colloquy at 7–8. (D.I. #11).

⁸ *See* State’s Response at 1.

the information was known to other prosecutors in the Department of Justice, and not properly disclosed by the assigned Deputy Attorney General.

The State argues that there was no *Brady* violation because any impeachment evidence would only have been relevant at trial to the extent that it might have been used to challenge the chain of custody of the drugs at issue, or to impeach the efforts of the substitute chemist - to correct any evidence of mishandling by the original chemist - prior to a guilty plea. The State maintains that Defendant's guilty plea should stand as it was knowingly, intelligently, and voluntarily entered. Finally, the State asserts that Defendant's Motion to Withdraw Guilty Plea is procedurally barred under Rule 61(i)(3), and that he does not meet the exceptions contained in Rule 61(i)(5).⁹ This Court agrees.

ANALYSIS

The procedural requirements of Rule 61 must be considered before any substantive issues are addressed.¹⁰ The Court considers the following four procedural imperatives of Rule 61(i): (1) the motion must be filed within one year of a final order of conviction; (2) any ground not asserted in a prior postconviction proceeding is barred "unless consideration of the claim is warranted in the interest of justice"; (3) any basis for relief must have been asserted in the proceedings leading to the judgment of conviction, as required by the rules of the court, unless

⁹ Defendant's Motion is reviewed under Superior Court Criminal Rule 61, as amended in June of 2014. As such, this Court does not address the "fundamental fairness" arguments presented by either Defendant or the State.

¹⁰ *Younger v. State*, 580 A.2d. 552, 554 (Del. 1990).

the movant can show “cause for relief from the procedural default” and “prejudice from violation of the movant’s rights”; and (4) any basis for relief must not have been formally adjudicated in any proceeding.¹¹

Under Rule 61(i)(1), Defendant had one year from the date of sentencing to file the instant motion. Because Defendant was sentenced on April 16, 2015 and he filed his Motion on June 3, 2015, his motion is not time barred. As this is his first motion of postconviction relief, the procedural hurdles of Rule 61(i)(1) and (2) are satisfied. However, Defendant’s claims cannot overcome the procedural bar under Rule 61(i)(3), because he did not assert any basis for relief during the proceedings leading to his judgment of conviction in this case. The Court agrees with the State that Defendant failed to raise the *Brady* violation claim in the proceedings leading to the judgment of conviction, and cannot overcome this procedural bar.

Defendant was aware of impeachment evidence related to his case when he entered into his plea agreement. Although he had opportunity to do so, Defendant did not contest, but rather, admitted his guilt. Defendant has not established cause for relief or any prejudice to his rights resulting from the procedural bar imposed by Rule 61(i)(3) because no external impediment prevented him from challenging

¹¹ Super Ct. Crim. Rule 61(i).

the sufficiency of the evidence against him.¹² While he argues that he was unaware of the separate unrelated incidents involving the chemist, he was fully aware of the mishandling of evidence related to his case. He could have challenged the evidence against him and elected to go to trial. Instead he chose to plead guilty. Notably, in *Aricidiacono v. State*, the Supreme Court recently reiterated that “if a defendant knowingly pled guilty to a drug crime, he could not escape his plea by arguing that had he known that the OCME had problems, he would not have admitted to his criminal misconduct in possessing illegal narcotics.”¹³ Defendant tries to use the other OCME unrelated problems to do the same here but does not establish cause for relief or any prejudice to his rights associated with the unrelated incidents. Accordingly, Defendant’s claims are procedurally barred under Rule 61(i)(3).

The procedural bars of Rule 61(i)(1)-(4) do not apply to a claim that the Court lacked jurisdiction or to a claim that satisfies the pleading requirements of Rule 61(d)(2)(i) and (ii).¹⁴ In other words, to overcome the procedural bars under 61, Defendant had to: “plead a claim that the Superior Court lacked jurisdiction; (ii) plead with particularity a claim that new evidence existed that created a strong inference that he was actually innocent; or (iii) a new rule of constitutional law

¹² See *State v. Kendall*, 2001 WL 392650 (Del. Super. Ct. Apr. 10, 2001).

¹³ *Aricidiacono*, 2015 Del. LEXIS 537 (citing *Brown*, 108 A.3d at 1205-06); *Brown v. State*, 2015 WL 3372271, at *2.

¹⁴ Rule 61(i)(5)(eff. June 4, 2014).

made retroactive to cases on collateral review rendered his convictions invalid.”¹⁵ Just as in *Aricidiacono*, Defendant does not claim that his guilty plea was falsely entered.¹⁶ Defendant’s motion does not give rise to any inference that he is actually innocent nor does he plead a retroactively applicable right. Therefore, this Court finds that Defendant’s motion fails to meet the standard under Rule 61(i)(5).

Even assuming Defendant is not procedurally barred, Defendant’s motion is without merit. Defendant argues that the State’s failure to disclose unrelated reports involving the same chemist amounted to a *Brady* violation, which effectively rendered his plea involuntary. This Court disagrees.

Brady v. United States

To establish a *Brady* violation, a defendant must show: (1) evidence exists that is favorable to the accused, because it is either exculpatory or impeaching; (2) that evidence is suppressed by the State; and (3) its suppression prejudices the defendant.¹⁷ Because the credibility and bias of witnesses can be central to the State’s case at trial, impeachment evidence also falls under the *Brady* umbrella if it is going to be used at trial.¹⁸ Defendant argues that his plea was involuntary because the non-disclosed *Brady* material could have been used as impeachable evidence and affected the voluntariness of his plea.

¹⁵ *Puckman v. State*, 2015 WL 7456020 (TABLE) (Del. Nov. 23, 2015).

¹⁶ *Aricidiacono*, 2015 Del. LEXIS 537.

¹⁷ *State v. Wright*, 67 A.3d 319, 324 (Del. 2013).

¹⁸ *United States v. Bagley*, 473 U.S. 667, 676 (1985); *Giglio v. United States*, 405 U.S. 150, 154–55 (1972).

Under the *Brady* analysis, “a guilty plea is considered involuntary if it is ‘induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor’s business (e.g. bribes).”¹⁹ Defendant asserts that the State knew of and purposefully failed to disclose this evidence, and that the State pressured him to accept the plea offer within unreasonable time constraints. Defendant has not produced any evidence to support the claim that the State deliberately or purposefully misrepresented information or withheld evidence related to his case. The State disclosed evidence that related to Defendant’s case prior to his guilty plea and gave Defendant an opportunity to consider the plea offer. The Court does not find that the time limitations imposed by the State induced or forced Defendant to accept the plea.

Further, this Court is further guided by *Brown v. State*, where our Supreme Court held that information pertaining to the OCME investigation was impeachment material only.²⁰ Similar to the instant case, the defendant in *Brown* pled guilty.²¹ The Supreme Court found that the impeachment evidence, which also came to light after Defendant pled guilty and was sentenced, did not go to the

¹⁹ *Aricidiacono v. State*, 2015 Del. LEXIS 537 (Del. Oct. 12, 2015) (citing *Brady*, 397 U.S. at 755 (internal citing omitted)(internal quotation marks omitted)).

²⁰ *Brown v. State*, 108 A.3d 1201, 1207 (Del. 2015).

²¹ *Id.*

defendant's actual innocence or affect the voluntariness of his plea.²² Just as in *Brown*, “[w]hen a defendant . . . has admitted in his plea colloquy that he possessed heroin and intended to sell it, the OCME investigation provides no logical or just basis to upset his conviction.”²³ “[I]mpeachment information is special” with regards to the notion of a fair trial; however, it has no bearing on whether a plea is made knowingly, intelligently, and voluntarily.²⁴

Defendant was aware of the evidence regarding the OCME's chemist in his case. With this knowledge, he admitted his factual guilt and waived his constitutional rights associated with a trial.²⁵ He is “bound by the statements he made to [this Court] before his plea was accepted and he is prevented from reopening his case to make claims that do not address his guilt and involve impeachment evidence that would only be relevant at trial.”²⁶ Further, Defendant has failed to allege any improper coercion that undermined his ability to rationally weigh the advantages and disadvantages of trial.²⁷ “[O]nly where the judge determines that ‘the plea was not voluntarily entered or was entered because of misapprehension or mistake of defendant as to his legal rights, should the judge

²² *Id.* at 1206, n. 30.

²³ *Id.* at 1202.

²⁴ *Id.* at 1206 (citing *United States v. Ruiz*, 536 U.S. 622, 629 (2002)).

²⁵ Plea Colloquy at 5–8. (D.I. #11).

²⁶ *Brewer v. State*, 119 A.3d 42 (Del. 2015)(quoting *Brown v. State*, 108 A3d at 1202).

²⁷ *Brewer*, 119 A.3d 42 (citing *Brady*, 397 U.S. at 750 (The Supreme Court found that when a defendant could, with the help of counsel, rationally weigh the advantages of going to trial against the advantages of pleading guilty, there was no constitutional cause for concern regarding the plea.)).

grant the defendant's request to withdraw his guilty plea."²⁸ Defendant fails to establish that his plea was not voluntarily entered or entered because of misapprehension or mistake as to his legal rights. As a result, the Court is satisfied with the plea as it was offered.²⁹

IT IS SO ORDERED, for the reasons stated above, Defendant's Motion to Withdraw Guilty Plea fails to state a legal or factual basis for relief under Rule 61, and is hereby **DENIED**.

Judge Vivian L. Medinilla

cc: Prothonotary

²⁸ *Scarborough v. State*, 938 A.2d 644, 650 (Del. 2007) (citing *State v. Insley*, 141 A.2d 619, 622 (Del. 1958)).

²⁹ This Court does not consider Defendant's reliance upon *Burge v. Fidelity Bond & Mortgage Co.*, 648 A.2d 414 (Del 1994), in support of his "unilateral mistake of a party" argument where that matter concerned a sheriff's foreclosure sale. It is inapplicable to this matter.