

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

STATE OF DELAWARE,)
)
 v.) ID No. 1012003877
)
KASON CHRISTMAS,)
)
 Defendant.)

Submitted: October 16, 2012
Decided: January 31, 2013

On Defendant’s Motion for Postconviction Relief – DENIED

ORDER

Andrew Vella, Esquire, Department of Justice, 820 N. French Street, Wilmington, DE 19801. Attorney for State of Delaware.

Kason Christmas, Howard R. Young Correctional Institution., P.O. Box 9561, Wilmington, DE 19809. *Pro Se* Defendant.

CARPENTER, J.

On this 31st day of January 2013, upon consideration of Defendant's *Pro Se* Motion for Postconviction Relief, it appears to the Court that:

1. Kason Christmas ("Christmas") has filed a *Pro Se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). For the reasons set forth below, Defendant's *Pro Se* Motion for Postconviction Relief is **DENIED**.

2. On December 6, 2010, Christmas was arrested by Wilmington Police and charged with: 1) possession with intent to distribute heroin; 2) trafficking heroin and MDMA; 3) maintaining a vehicle for the use/sale/purchase of drugs; and 4) failure to use a turn signal.

3. On November 15, 2011, Christmas pled guilty to the charge of possession with intent to distribute heroin and, effective October 6, 2011, and was sentenced to five (5) years six (6) months incarceration at Level 5, followed by eighteen (18) months at Level 3 supervision. Christmas did not appeal his conviction.

4. On January 30, 2012, Christmas filed a Motion for Modification of Sentence, requesting that the eighteen (18) months at Level 3 supervision be reduced to six (6) months. Finding no justification for the modification sought, the Motion was denied.

5. On May 22, 2012, Christmas filed a Letter, requesting the Court to re-examine his Motion for Modification of Sentence. This Court responded on May 24, 2012, stating that no response was required as the matter had been previously ruled upon.

6. On June 26, 2012, Christmas filed the present Motion for Postconviction Relief, arguing that the following constitute grounds for relief: 1) illegal arrest; 2) ineffective assistance of counsel; 3) illegal detention/illegal search and seizure; and 4) judicial abuse of discretion. Since Christmas pled guilty to his offenses, he has waived any claim that may have been asserted relating to his arrest, detention, and search.¹ However, since the argument in these areas overlaps with his ineffective assistance of counsel assertions, each of these will be addressed.

7. First, Christmas alleges that there was insufficient probable cause for his arrest. Specifically, Christmas states that: 1) the confidential informant was not past, proven, and reliable; 2) the police officer directed the drug K-9 where to search; and 3) the police officers did not conduct independent surveillance to corroborate the information provided by the informant. The Court cannot agree.

¹ See *Bentley v. State*, 2011 WL 3793779, at *1 (Del. Aug. 25, 2011) (citing *Downer v. State*, 543 A.2d 309, 311-13 (Del. 1988)) (“Under Delaware law, a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea.”)

8. During the first week of December in 2010, Detectives Robert Fox and Andrea Janvier of the Wilmington Police, Drug, Organized Crime, and Vice Unit received information from a past, proven and reliable informant that a 2004 Buick LaSabre with Delaware tag number XC271993 (“Buick”) was involved in the distribution of heroin in Wilmington and New Castle. Specifically, the informant indicated that the Buick made trips to New York to pick up large amounts of heroin for distribution in Delaware.

9. On December 5, 2010, Detectives Fox and Janvier received information that the Buick would be traveling to New York to pick up heroin and would be returning in the early morning hours of December 6, 2010 to 27 Thorn Lane in the Rosegate neighborhood in New Castle, where police had previously observed the vehicle parked at or near on several occasions. With this information, the detectives and assisting police officers set up surveillance on both sides of the Delaware Memorial Bridge, where they observed the Buick traveling southbound off the bridge. Exiting at the Route 9 interchange, the Buick traveled north into New Castle and made an abrupt turn into the Rosegate neighborhood without using a turn signal. As a result, the police stopped the vehicle, and Christmas was its sole occupant. Christmas agreed to speak with police, indicating that he was returning from New York and was on parole. Although the

detectives did not indicate they were conducting a drug investigation, Christmas voluntarily stated the Buick belonged to him and that there were no drugs inside the vehicle. Subsequently, a K-9 sweep of the vehicle was conducted and the drug canine, Kai, alerted police to the presence of illegal substances.

10. On December 6, 2010, a search warrant was executed for the Buick, where the following items were discovered in the vehicle's trunk: 1) two (2) clear baggies inside the pocket of a leather jacket, which contained a combined weight of 8.7 grams of heroin; and 2) one (1) clear baggie inside the pocket of a leather jacket, which contained forty-two (42) MDMA (Ecstasy) pills.

11. Counsel for Christmas filed a Motion to Suppress, essentially asserting the claims now made in Christmas' Rule 61 petition. The Court held a hearing on the Motion on May 20, 2011 and denied the Motion. The Motion was filed and argued appropriately by counsel, reflecting an appreciation for the suppression issues and the facts of the case. A Rule 61 petition is not the proper mechanism to attack a judicial ruling on the illegality of a search. If Christmas was dissatisfied, he could have proceeded to trial and, if found guilty, appealed this issue to the Supreme Court. He did not, and therefore, has waived any objection to the search conducted by the police. Nonetheless, as the record indicates, the informant was a past, proven, and reliable informant who provided

highly specific and predictive information. Specifically, the informant provided information regarding: 1) the vehicle's make, model, and tag number; 2) the type of drug being distributed; and 3) the address to which the car would return. Further, police corroborated this information by observing the Buick at the 27 Thorn Lane address on several occasions and conducting surveillance at the Delaware Memorial Bridge. Moreover, there was no indication that Kai's handler improperly directed the drug canine to search a particular area of the vehicle; in fact, Kai's positive indication regarding the presence of drugs provided an independent basis of probable cause. As a result, the Court concludes there was sufficient probable cause to support the issuance of a search warrant for the Buick, which ultimately resulted in Christmas' lawful arrest.

12. Christmas next contends Christopher Tease, an attorney he initially retained, provided him with ineffective assistance of counsel. Specifically, Christmas states that: 1) Mr. Tease failed to thoroughly investigate his "illegal arrest" and the surrounding facts; 2) Mr. Tease failed to prepare for trial; and 3) Mr. Tease failed to communicate with Christmas prior to the court appearance. Again, the Court cannot agree.

13. Ineffective assistance of counsel claims are governed by the two-part test established in *Strickland v. Washington*². Specifically, a defendant's claim of ineffective assistance of counsel is subject to a strong presumption that the representation was professionally reasonable.³ In order to overcome this presumption, the defendant must establish that: 1) his trial counsel's efforts fell below a reasonable objective standard; and 2) there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's unprofessional errors.⁴ However, "mere allegations of ineffectiveness will not suffice."⁵ Instead, "a defendant must make, and substantiate, specific allegations of actual prejudice."⁶ Additionally, courts must evaluate defense counsel's conduct at the time of the trial in order to maintain the proper perspective and "eliminate 'the distorting effects of hindsight.'"⁷

14. The Court finds that the Motion to Suppress filed by counsel clearly contradicts the assertions now made by Christmas. The Motion correctly set forth the critical facts and argued the appropriate and available legal issues. While Christmas may not have agreed with the conclusions reached by the Court, there is

² 466 U.S. 668, 687 (1984); *see also Winn v. State*, 1998 WL 15002 (Del. Jan. 7, 1998).

³ *Winn*, 705 A.2d at *2.

⁴ *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

⁵ *Gattis v. State*, 697 A.2d 1174, 1178.

⁶ *Id.* at 1178-79.

⁷ *Id.* at 1178 (citing *Strickland*, 466 U.S. at 689).

nothing to suggest that Mr. Tease could have done additional “investigation” that would have affected the outcome of the search decision. Christmas’ assertions regarding Mr. Tease’s failure to properly prepare for trial are also without merit. Mr. Tease filed the Motion to Withdraw because Christmas had failed to cooperate with his counsel and even failed to provide the name and address of witnesses Christmas asserted would provide a defense to the charges. However, whatever lack of preparation Christmas believed occurred was rendered moot by his own failure to appear for trial. Finally, if Mr. Tease failed to provide information to Christmas, which the Court can find no evidence to suggest occurred, it was also mooted by his *capias* status and the subsequent hiring of another attorney. Put simply, Christmas cannot argue that Mr. Tease was unprepared when he failed to appear for the one event that may have actually demonstrated Mr. Tease’s ill-preparedness. As a result, the Court concludes Christmas has failed to demonstrate how Mr. Tease provided ineffective assistance of counsel.

15. Third, Christmas argues he was illegally detained because the traffic stop was purely pretextual and, therefore, Mr. Tease should have moved to suppress subsequent statements that were given without *Miranda* warning. No evidence was presented to dispute Christmas’ commission of a traffic violation while under police observation, which provided a separate legal basis for the

vehicle stop.⁸ When an officer makes a “traffic stop based on a violation of the traffic code that he has observed, any pretextual reason or actual motivations that might also be involved in the officer’s actions are irrelevant.”⁹ Therefore, the Court finds there was reasonable articulable suspicion to stop the vehicle, even if the police had not been provided the information by the informant.

16. Additionally Christmas claims he was not properly informed of his *Miranda* rights. In order for *Miranda* to apply, “the defendant must be: (i) in custody or in a custodial setting, and (ii) the questioning must rise to the level of an interrogation.”¹⁰ A person is “in custody” when, “under the totality of the circumstances, a reasonable man in the suspect’s position would feel a restraint on his freedom of movement fairly characterized as that ‘degree associated with formal arrest’ to such an extent that he would not feel free to leave.”¹¹ However, “[t]he roadside questioning of a motorist detained pursuant to a routine traffic stop does not constitute ‘custodial interrogation’ for the purposes of the *Miranda* rule.”¹² Here, Christmas was detained as part of a routine traffic stop and, even if he did not feel free to leave, police were not required to give him a *Miranda*

⁸ See *Howard v. State*, 2007 WL 2310001, at * (Del. Super. 2007).

⁹ *State v. Rickards*, 2 A.3d 147, 151-52 (Del. Super. 2010), *aff’d* 30 A.3d 782 (Del. 2011) (citations omitted).

¹⁰ *Loper v. State*, 8 A.3d 1169, 1176 (Del. 2010).

¹¹ *McAllister v. State*, 807 A.2d 1119, 1126 (Del. 2002) (citing *Torres v. State*, 1992 WL 53406, at *2 (Del. Feb. 7, 1992)).

¹² *Berkemer v. McCarthy*, 468 U.S. 420, 421 (1984).

warning because he was not “in custody.” Therefore, the Court finds Christmas’ claim regarding illegal detention is without merit. Further, based upon this ruling, the Court finds there are insufficient facts to support Christmas’ claim that Mr. Tease should have moved to suppress Christmas’ statements regarding his recent trip to New York.

17. Lastly, Christmas alleges the Court abused its discretion by refusing to give his replacement counsel a continuance in order to become more familiar with Christmas’ case. When Christmas failed to appear for his trial on June 7, 2011, a *capias* was issued for his arrest. Four months later, Christmas was arrested and a new trial date of November 15, 2011 was ordered. Therefore, not only did Christmas have four (4) months from his initial trial date to retain new counsel, but the difficult situation his new counsel faced was the result of Christmas’ own illegal conduct. One cannot fail to appear for trial and then, in good faith, subsequently argue that his new attorney is unprepared. Such manipulation will not be condoned by the Court. Further, there is no evidence that the Court acted with any motivation other than to preserve the efficient administration of justice and resolve a case that had been pending for some time.

Having found that all of Christmas' claims for relief are without merit,
Christmas' Motion for Postconviction Relief is hereby **DENIED**.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.