



On May 18, 2011, Wilmington Police executed a search warrant at 205 S. DuPont Street, Apartment 1S, Wilmington, Delaware. Shamus Rowley was arrested and released on June 2, 2011 after posting bail. Subsequently a grand jury indicted Mr. Rowley for eight (8) felonies and two (2) misdemeanors. Mr. Rowley did not appear at his final case review on December 5, 2011 and a capias was issued. On May 3, 2012, Mr. Rowley's capias was returned and he was arrested and incarcerated in lieu of \$150,000 cash bail.

On June 26, 2012, Mr. Rowley pled guilty to Possession with Intent to Deliver Cocaine and Possession of a Firearm by a Person Prohibited. Mr. Rowley was represented by his trial attorney, Raymond Armstrong, Esquire ("Trial Counsel"). As part of the plea agreement the State recommended that Mr. Rowley receive a sentence of eighteen (18) years. For the charge of Possession with Intent to Deliver Cocaine, the State recommended ten (10) years at supervision Level 5, suspended after a minimum mandatory time of three (3) years, for two (2) years at supervision Level 4, suspended after six (6) months for Level 3 probation. As to the charge of Possession of a Firearm by a Person Prohibited, the State recommended that Mr. Rowley be sentenced to eight (8) years at supervision Level 5, suspended after a minimum mandatory time of five (5) years for concurrent probation. The plea agreement also indicated that the State would not move to declare Mr. Rowley a habitual offender under 11 *Del. C.* § 4214 (a) and (b).

The Court engaged in a lengthy and detailed plea colloquy with Mr. Rowley. The Court asked Mr. Rowley if he had been promised or guaranteed the sentence that would be imposed by the Court. Mr. Rowley answered "No sir." The Court also asked Mr. Rowley if he understood that the State's sentencing recommendation would not control the sentence imposed by the Court at the time of sentencing. Mr. Rowley answered "Yes, sir." During the course of the plea

colloquy and also through the “Truth-in-Sentencing Guilty Plea Form,” Mr. Rowley was informed that the Court could impose up to twenty-three (23) years for the two convictions.

Mr. Rowley was sentenced on September 7, 2012 and was committed to the custody of the Department of Corrections for twenty-three (23) years at Level 5. As to the charge of Possession with Intent to Deliver Cocaine, Mr. Rowley was sentenced to fifteen (15) years at supervision Level 5, suspended after five (5) years, for three (3) years at supervision Level 4 work release, suspended after six (6) months, for one (1) year and six (6) months at supervision Level 3. As to the charge of Possession of a Firearm by a Person Prohibited, Mr. Rowley was sentenced to eight (8) years at supervision Level 5, suspended after six (6) years, for two (2) years at supervision Level 3. The sentence was effective May 3, 2012, and included fourteen (14) days of credit time for the days detained in 2011.

**I. Mr. Rowley’s Rule 61 Motion for Postconviction Relief and Appointment of Counsel by the Court**

Mr. Rowley filed a Motion for Postconviction Relief on March 14, 2013 pursuant to Superior Court Criminal Rule 61 as a self-represented litigant.<sup>1</sup> Rule 61 governs motions for postconviction relief.

In the motion, Mr. Rowley first contends that a miscarriage of justice occurred because the Court did not follow the State’s recommendation in the Plea Agreement at sentencing, but rather imposed a more severe sentence. Mr. Rowley also contends that the Court abused its discretion and committed an error of law when it imposed a sentence on Mr. Rowley that did not correspond to the sentence recommended by the State in the Plea Agreement.

Second, Mr. Rowley contends that he received ineffective assistance of counsel from his Trial Counsel before he pled guilty. Specifically, Mr. Rowley states that Trial Counsel, who was

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<sup>1</sup> Del. Super. Crim. R. 61.

appointed by the Court to represent Mr. Rowley, did not meet with him until the day of the trial. He also claims that his Trial Counsel failed to make appropriate pre-trial motions, including failure to file a Motion to Suppress.

Third, Mr. Rowley contends that his confession to the police was coerced and made involuntarily because he had consumed substantial quantities of alcohol. Mr. Rowley also claims that use of this involuntary confession violated his Fifth Amendment rights.

After receiving Mr. Rowley's first Motion for Postconviction Relief, the Court appointed counsel, John Barber, Esquire, to represent Mr. Rowley in connection with the motion, pursuant to Rule 61. Mr. Barber reviewed Mr. Rowley's file and Mr. Rowley's Rule 61 motion. Mr. Barber then filed a Motion to Withdraw as Counsel. In his Motion to Withdraw, Mr. Barber indicated that he undertook a thorough analysis of the record to evaluate Mr. Rowley's claims for postconviction relief and determined that the claims do not have enough merit to be ethically advocated. Mr. Barber stated that he also reviewed the record to determine if any other meritorious grounds for relief exist and concluded that there are none.

## **II. Mr. Rowley's Rule 61 Motion**

### **A. Mr. Rowley's Claim of Abuse of Discretion by the Superior Court**

Mr. Rowley contends that this Court abused its discretion when it did not impose a sentence consistent with the State's sentencing recommendations. Mr. Rowley's plea agreement was made pursuant to Superior Court Criminal Rule 11(3)(1)(B).<sup>2</sup> This Rule provides that the State may "[m]ake a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be

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<sup>2</sup> Sup. Ct. Crim. R. 11(e)(1)(B).

binding upon the court.”<sup>3</sup> During the plea colloquy Mr. Rowley was specifically asked whether he understood that the State’s sentencing recommendation would not control the sentence that might be imposed by the Court. He answered “Yes sir.” Mr. Rowley also acknowledged that the Court had the discretion to sentence him up to twenty-three (23) years during the plea colloquy and when he signed the “Truth-in-Sentencing Guilty Plea Form.” The documents and the plea colloquy clearly disclosed to Mr. Rowley that he faced up to twenty-three (23) years for the two offenses. As such, Mr. Rowley was fully aware that the Court was not obligated to follow the State’s sentencing recommendation.

Mr. Rowley was sentenced to a longer sentence than the sentence recommended by the State. However, the sentence was within the statutory maximum of twenty-three (23) years. The Court was not required to follow the recommendation made by the State. Mr. Rowley’s contention that this Court did not honor the State’s sentencing recommendation has no merit.

#### **B. Mr. Rowley’s Claim of Ineffective Assistance of Counsel**

Mr. Rowley contends that he received ineffective assistance from his trial counsel before he pled guilty. Mr. Rowley asserted that his Trial Counsel was appointed on August 12, 2011, but Trial Counsel did not meet with him to discuss his defense until June 26, 2012.<sup>4</sup> Mr. Rowley contends that for the ten months between August 12, 2011 and June 26, 2012, Trial Counsel did not confer with Mr. Rowley regarding his case. Mr. Rowley also argues that Trial Counsel should have moved to suppress the evidence seized from the property.

The Court requested a response from Trial Counsel regarding the allegations of ineffective assistance of counsel. Trial Counsel provided an affidavit denying the allegations

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<sup>3</sup> *Id.*

<sup>4</sup> Mr. Rowley pled guilty on June 26, 2012. Mr. Rowley’s trial counsel was present at the plea colloquy.

made by Mr. Rowley, specifically stating that he met with Mr. Rowley at the first case review on September 12, 2011. During this meeting, Mr. Rowley informed Trial Counsel that the drugs and firearm recovered at the apartment belonged to him. At the same meeting Mr. Rowley stated that he voluntarily told the police that the drugs found at the apartment belonged to him. Trial Counsel also indicated that at the September 2011 meeting he and Mr. Rowley discussed that the facts of the case did not support the filing of a Motion to Suppress.

Trial Counsel and Mr. Rowley did not meet between September 2011 and May 2012. During this time Mr. Rowley failed to communicate with Trial Counsel or attend his final case review.

After Mr. Rowley was arrested on *capias*, Trial Counsel met with Mr. Rowley on June 19, 2012 at the prison. Trial Counsel and Mr. Rowley discussed the State's plea offer. Based on the discussion at that meeting, Trial Counsel provided a counteroffer to the State in order to reach a plea agreement. On June 26, 2012, Trial Counsel met with Mr. Rowley for a third time. Mr. Rowley accepted the revised plea agreement at this time.

Trial Counsel did not file a Motion to Suppress the evidence in this case after Mr. Rowley admitted to Trial Counsel that the handgun and drugs recovered by the police belonged to Mr. Rowley. According to Trial Counsel, Mr. Rowley agreed that the facts of the case did not support a Motion to Suppress.

To succeed on a claim for ineffective assistance of counsel, a defendant must show that (1) trial counsel's representation fell below an objective standard of reasonableness and (2) counsel's conduct prejudiced defendant.<sup>5</sup> Defendant must overcome the presumption that

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<sup>5</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

counsel's representation was professionally reasonable.<sup>6</sup> Prejudice must be shown and substantiated by concrete allegations.<sup>7</sup>

Based on the evidence presented to this Court, Mr. Rowley has not met this burden. Trial Counsel met with Mr. Rowley several times to discuss his case. Trial Counsel made a strategic decision that filing a Motion to Suppress would be futile because the record evidence did not support such a motion. Also, Mr. Rowley was consulted about the decision not to file a Motion to Suppress and he agreed with trial counsel's strategy decision.

Furthermore, Mr. Rowley, not Trial Counsel, was responsible for his unavailability and lack of meetings with Trial Counsel between September 2011 and June 2012. Mr. Rowley failed to appear for his final case review and was out on capias from December 5, 2011 until his arrest on May 3, 2012. This unavailability is charged to Mr. Rowley, not Trial Counsel. Once Trial Counsel was able to get in contact with Mr. Rowley, after he was arrested and in prison, Trial Counsel took appropriate steps to meet with Mr. Rowley and discuss his case.

### **C. Mr. Rowley's Claim that his Fifth Amendment Rights Were Violated**

Mr. Rowley contends that his Fifth Amendment rights were violated at the time of the arrest. Mr. Rowley states that the confession he gave to the police officers was involuntary and coerced because he had consumed copious amounts of alcohol and was intoxicated. As such, Mr. Rowley contends he did not have the capacity to waive his *Miranda* rights.

This issue is moot because Mr. Rowley pled guilty to Possession with Intent to Deliver Cocaine and Possession of a Firearm by a Person Prohibited. An issue becomes moot if intervening events cause a party to lose its standing to pursue the issue during the pendency of

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<sup>6</sup> *Id.*

<sup>7</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

the action.<sup>8</sup> Mr. Rowley's guilty plea renders the use of any confession moot. As the issue is moot, the claim is denied.

### **III. Rule 61 Counsel's Motion to Withdraw as Counsel for Petitioner Shamus Rowley**

After reviewing the record to determine if any other meritorious grounds for relief and concluding that there are no meritorious grounds for relief, Rule 61 Counsel filed a Motion to Withdraw pursuant to Superior Court Criminal Rule 61(e)(2). Withdrawal may be appropriate when "counsel considers the movant's claim to be so lacking in merit that counsel cannot ethically advocate it, and counsel is not aware of any other substantial ground for relief available to the movant, [and therefore] counsel may move to withdraw."<sup>9</sup> The Court must also conduct a review of the record to determine whether Defendant's motion contains any reasonable grounds for relief.<sup>10</sup>

Mr. Rowley's Rule 61 counsel, Mr. Barber, has stated that he undertook a thorough analysis of the record to evaluate Mr. Rowley's claims and has determined that the claims do not have enough merit to be ethically advocated. Mr. Rowley's counsel has also reviewed the record to determine if any other meritorious grounds for relief exist, and concluded that there are no other meritorious grounds for relief. Finally, the Court, in Section II of this opinion, has reviewed Mr. Rowley's motion for postconviction relief and has determined that there no meritorious grounds for relief based on the arguments in Mr. Rowley's motion.

### **IV. CONCLUSION**

There is no merit to the claims asserted by Mr. Rowley. His decision to plead guilty was a knowing, intelligent and voluntary waiver of his constitutional rights to trial. Mr. Rowley fully

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<sup>8</sup> *Dejesus v. State*, 977 A.2d 797, 799 (Del. 2009).

<sup>9</sup> Sup. Ct. Crim. R. 61(e)(2).

<sup>10</sup> *State v. West*, 2013 WL 6606833, at \*3 (Del. Super. December, 12, 2013).

understood and acknowledged that he could be sentenced up to twenty-three (23) years. There is no basis upon which the Court may conclude that Trial Counsel was ineffective. Mr. Barber was appointed by the Court to represent Mr. Rowley in the postconviction proceedings, pursuant to Rule 61. Mr. Barber concluded that there are no meritorious grounds for postconviction relief and that no other grounds for relief exist in Mr. Rowley's case sufficient for Mr. Barber to ethically advocate for Mr. Rowley. As such, withdrawal as counsel is appropriate.

**NOW, THEREFORE, IT IS HEREBY ORDERED this January 13, 2014, Mr. Rowley's Motion for Postconviction Relief is hereby DENIED and the Motion to Withdraw as Counsel is hereby GRANTED.**

*Andrea L. Rocanelli*

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**Honorable Andrea L. Rocanelli**