SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

June 2, 2014

Natalie Woloshin, Esquire
Woloshin, Lynch, Natalie & Gagne
3200 Concord Pike
P. O. Box 7329
Wilmington, DE 19803

Christopher S. Koyste, Esquire
709 Brandywine Boulevard
Wilmington, DE# 19809

Kevin Carroll, Esquire
Department of Justice
820 N. French Street, 5th Floor
Wilmington, DE 19801

RE: **State vs. Robert Williams**
ID #1007021554
Motion for Postconviction Relief (R1)

Date Submitted: May 28, 2014

Dear Counsel:

Following a jury trial in June 2011 Robert Williams (the "Defendant") was convicted of two counts of Robbery in the First Degree, two counts of Possession of a Firearm During the Commission of a Felony (*i.e.,* the Robbery offense), one count of Conspiracy and one count of Assault in the Third Degree. Thereafter, a Motion for

Judgment of Acquittal was briefed with the benefit of trial transcripts. The Motion focused on whether or not the State proved a firearm was possessed by the Defendant. The Motion was denied, and the Defendant was sentenced to twenty two (22) years Level 5, followed by probation. The Defendant's conviction was affirmed by the Delaware Supreme Court.[1]

On August 7, 2013 the Defendant filed a *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). Defendant complained trial counsel was ineffective, that his "record" was illegally obtained, and the Court had erred as to an evidentiary ruling.

Pursuant to Rule 61, as amended in 2013, Natalie S. Woloshin, Esquire ("Ms. Woloshin") was appointed for the Defendant.

On December 17, 2013 Ms. Woloshin filed Defendant's Amended Rule 61 Motion.[2] Trial counsel has submitted a Rule 61(g) Affidavit. In response, the State has submitted its position, and the Defendant filed his reply on March 14, 2014. On May 28, 2014 an evidentiary hearing took place. The matter is now ripe for a decision.

The present postconviction claims are: (i) trial counsel was ineffective by

---

[1] *Williams v. State*, 2012 WL 5351201 (Del. Oct. 26, 2012).

[2] Ms. Woloshin did not include the Defendant's *pro se* claims, therefore those claims are deemed abandoned.

failing to file a suppression motion based on the Defendant's unreasonable delay in being presented to a Magistrate; (ii) trial counsel was ineffective by not objecting to the admission of co-conspirator testimony; and (iii) trial counsel was ineffective by not investigating and developing mitigating evidence at sentencing.

APPLICABLE LAW AS TO ALL THREE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS

Since the Defendant's claims allege ineffective assistance of counsel, it is appropriate to set forth the applicable law our Supreme Court recently reviewed when it applied the *Strickland*[3] standard in *Swan v. State*:

> *Strickland* requires Swan [the defendant] to make two showings. First, Swan [the defendant] must show that defense counsel's performance was deficient. ("This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed to . . . [the defendant] by the Sixth Amendment."). Second, *Swan* must show that his counsel's deficient performance prejudiced the defense. ("This requires showing that counsel's errors were so serious as to deprive . . . [the defendant] of a fair trial, a trial whose result is reliable."). In *Strickland*, the United States Supreme Court explained that "[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . that course should be followed." ("The object of an ineffectiveness claim is not to grade counsel's performance.").
>
> Under *Strickland's* first prong, judicial

[3] *Strickland v. Washington*, 466 U.S. 688 (1984) (hereinafter *"Strickland"*).

scrutiny is "highly deferential." ("[T]he defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'"). "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Accordingly, there is a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance . . . ." The *Strickland* court explained that "a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." A movant "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment."

Under *Strickland's* second prong, "[i]t is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding." In other words, "not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding." "Some errors will have had a pervasive effect..., and some will have had an isolated, trivial effect." Accordingly, "[t]he [movant] must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." "Reasonable probability" for this purpose means "a probability sufficient to undermine confidence in the outcome." In making this determination, the *Strickland* court explained that a court must consider the "totality of

> the evidence," and "must ask if the [movant] has met the burden of showing that the decision reached would reasonably likely have been different absent the errors." "[T]he *Strickland* standard must be applied with scrupulous care, lest 'intrusive post-trial inquiry' threaten the integrity of the very adversary process the right to counsel is meant to serve."[4]

EVIDENCE AT TRIAL

At trial there was testimony involving two incidents occurring over two consecutive days. Both incidents involved allegations of armed robbery.

In the first incident, the victim testified that when he went to the street to put the windows up in his car, he was accosted by a man with a gun pointed at him. The man told him to give up whatever he had. When the victim told him he had nothing, he was struck in the head with the gun causing bleeding. Another man searched him and then told the victim to take off his silver chain necklace. The victim gave up his chain. The victim was then told to leave, and he did.

The next day, two victims reported that while talking on the street a group of men walked by them. One of the men circled back and asked "can you do me a favor," and then pulled out a gun. This person was later identified as a black male. Then another male approached with a gun. The men took money and cell phones from the two victims. This occurred prior to midnight.

---

[4] *Swan v. State*, 28 A.3d 362 (Del. 2011) (all footnotes and citations omitted).

In the early hours of the next day, July 24, 2010, the police acting on their initial investigation went to an apartment located at 709 Sandburg Place. The Defendant was taken into custody on an outstanding capias. Following the investigation, in which there were five to six witness interviews, the Defendant was interviewed. The Defendant's statement was given at 5:41 p.m. at New Castle County Police headquarters. The Defendant admitted his involvement in the offenses, and admitted being the ring leader. The Defendant's statement was admitted into evidence.

Additionally, one of the victims identified his cell phone that had been recovered by the police pursuant to the search warrant. The victim also testified he recognized the larger caliber of the two guns recovered as being used in the robbery.

Matthew Bradley ("Bradley") testified and identified the Defendant, also known as "Rock," as being at Bradley's apartment for a party. Bradley testified that the Defendant and Cameron Davis ("Cam") left the party. Prior to Rock and Cam leaving, the two of them had a conversation about "going to rob somebody." Bradley testified that he remembered Rock as the person saying that.

Bradley further testified that later that night Rock and Cam returned and another person named "E" was with them. Rock and Cam each had a handgun. Bradley took the guns and put them in his bedroom. He said he did this on his own

because people from the party were still in his apartment. Bradley testified that Rock also had a cell phone and some money, and Cam had another cell phone. The cell phones were also placed in Bradley's bedroom. At trial Bradley identified the guns shown in the photograph of his bedroom. Likewise, he identified the cell phones.

During Bradley's cross examination the defense raised an inconsistency in that Bradley had earlier reported that he had taken the guns from Rock and Cam to hide them on their behalf, not for safety. The defense's focus was the inconsistencies in why the guns were taken and attempting to try to put "the hiding" of the guns on Cam. The testimony from Bradley involving Bradley hiding the guns for Cam and Rock was elicited by the defense, not the State.

Rebecca Bradley, Bradley's twenty three (23) year old sister, testified about the night of the party. She stated that Rock and Cam left the party and were gone for approximately one to two hours, and later returned with "E." They had two guns, two cell phones, and $15.00. She confirmed the guns were placed in her brother's room.

On cross examination of Rebecca Bradley, the defense inquired about Cam wanting her brother to hide his gun in the park. However, the witness had no knowledge of this. She testified the police came to the house around 1:00 or 2:00 a.m.

David DiAngelo ("DiAngelo") was also at the party and testified at trial. He

was charged with one count of Conspiracy and one count of Robbery in the First Degree; however prior to Mr. William's trial he pled to Conspiracy and Robbery in the Second Degree.[5] He testified he had been present during the conversation between Rock and Cam about committing a robbery because they needed money. DiAngelo testified that Rock and Cam left the party and when they returned Rock said they had just robbed two people sitting on a curb a couple of parking lots over. This testimony matched the victims' testimony that money and cell phones were taken. He testified Rock had one of the guns pictured in State's Exhibit #27.

DiAngelo testified as to the "chain-necklace incident". He said guns were used and a chain was stolen. He thought it was Rock that struck the victim in the head with the pistol.

The chief investigator identified the photos of the guns and the victim's cell phones which were found in Bradley's bedroom as aforementioned. The guns were introduced into evidence.

In the defense's case, the defense successfully raised the issue of how the injury to the first victim was inflicted (*i.e.* whether it was by a gun or something else).

---

[5] The robbery and conspiracy guilty plea entered by this witness did not involve the above incidents but was a separate incident with Cam.

The Defendant chose to testify. He gave a narrative denying any involvement in the crimes and putting it all on Cam. He further testified that his confession was not what he did, rather what he was told others had done.

Ultimately, the Defendant was found not guilty of the charges involving the first victim (chain-necklace), except for the charge of Assault in the Third Degree. He was found guilty of the charges on the second robbery.

Following the convictions, a presentence report was ordered by the Court. The Defendant spoke at his sentencing. There he acknowledged his wrong doing, apologized, and said "I do take responsibility for my actions."

INEFFECTIVE COUNSEL CLAIM FOR FAILING TO FILE A SUPPRESSION MOTION BASED ON A DELAY IN PRESENTMENT TO A MAGISTRATE

11 *Del. C.* 1909(a) requires every person arrested to be brought before a Magistrate "without unreasonable delay," and in any event they should be brought before the Magistrate within twenty-four (24) hours unless special circumstances are found by the Court.

Superior Court Criminal Rule 5(a) likewise requires the authorities to take a person arrested without a warrant to a Magistrate "without unreasonable delay."

In *Vorhauer v. State*, our Supreme Court laid down a bright line rule that an

incriminating statement obtained by the police after the expiration of twenty-four (24) hours was inadmissible without regard to voluntariness.[6]

If there is "unreasonable delay" in the presentment of an individual in cases where the delay is less then twenty-four (24) hours, the exclusionary rule announced in *Vorhauer* may be applicable. However, no bright line rule exists in cases where the presentment is less than twenty-four (24) hours. "Each case must be considered by the trial judge on its own facts and the number of hours of detention prior to appearance before a Justice of the Peace is to be considered by the trial judge, together with all the other circumstances of the case, in determining if the delay was unreasonable ...."[7] Each case must be judged on its own facts and the Judge should consider the totality of the circumstances, *(i.e.* the length of the delay; the reasons for the delay; and the atmosphere surrounding the person's detention).[8]

It is a fact that the Defendant was not taken to a Magistrate for the start of judicial proceedings until approximately 26 hours after he was taken into custody, but his inculpatory statement took place approximately 15 hours after he was taken into custody.

---

[6] 212 A.2d 886 (Del. 1965).

[7] *Webster v. State*, 213 A.2d 248.301 (Del. 1965).

[8] *Wright v. State*, 633 A.2d 329 (Del. 1993).

The Defendant's Motion and the State's position is that he was taken into custody at approximately 2:21 a.m. on July 24, 2010. The Defendant's statement, which the Court recognizes as voluntary and in compliance with *Miranda v. Arizona,*[9] began at 5:41 p.m. on July 24, 2010. No other evidence was obtained by the police following the Defendant's statement.

So the question for the Court to focus on is not the 26 hour delay because no incriminating statements or evidence was obtained by the authorities after the time that *Vorhauer* established as the bright line 24 hour period. Rather, the question is whether under all the circumstances the time line from the Defendant being taken into custody until the statement was given was an unreasonable period of time triggering a finding of the statement being automatically involuntary under the *Vorhauer* ruling.

In other words, has the Defendant shown an unreasonable delay that should trigger an automatic finding of legal involuntariness, even if the Defendant's statement was found by the Court to be voluntary.

The Court makes the following findings of fact:

(a) An armed robbery is reported shortly before midnight. Patrol officers responded and interviewed the victims and canvassed the area.

(b) Approximately at 2:21 a.m. the investigating detective is called into the

---

[9] 384 US 436 (1966).

case.

(c) Approximately at this same time patrol officers have gone to an apartment in regard to this robbery investigation and they take the Defendant into custody, not on the robbery case, but on outstanding capias warrants. The Defendant was taken to the "turn key" holding area of the New Castle County Police Station.

(d) Because of the number of witnesses, the potential number of Defendants, and the nature of the charges other detectives became involved. They divided up the witness interviews. Both robbery victims were interviewed by the detectives, with the second victim's interview beginning at 4:43 a.m.

(e) Other witnesses were interviewed at 4:19 a.m.; 5:21 a.m.; 6:15 a.m.; and 6:37 a.m.

(f) The police then interviewed the people at the apartment where the Defendant was taken into custody. There had been a party that night prior to the police arriving. Approximately five interviews were conducted by multiple detectives. These interviews ran from approximately 10:30 a.m. to 1:27 p.m.

(g) Between the time of the interviews in (e) and (f) above, the police prepared affidavits in support of a search warrant of the apartment. At 9:50 a.m. the police obtained a search warrant. At 11:19 a.m. and 11:20 a.m. the police seized two firearms from the apartment which was connected to the armed robbery. The victims

cell phones were also located.

(h) Based upon their investigation, the police were focusing on the Defendant as being one of the robbers.

(i) At 1:25 p.m. the police interviewed a person who became a co-defendant with the Defendant. The plot was thickening because the investigation revealed involvement in two other robbery cases.

(j) At 3:32 p.m. another co-defendant was interviewed about the robberies.

(k) Finally, the Defendant was interviewed at 5:41 p.m.

(l) The police then prepared arrest warrants for the Defendant and co-defendant on all charges. This took until the early morning hours of the next day. The Defendant was processed on these warrants at the "turn key" area and then presented to a magistrate at 4:07 a.m.

(m) The Defendant testified that prior to his statement he was cold and tired. He napped on and off on the floor. He wanted to make a phone call but could not and also wanted to be taken to a magistrate to make bail on the capias matters. He testified he recalled being taken into custody earlier then the police reports indicate. He acknowledged he was fed twice during the time he was held. The Defendant acknowledged he knew he was on escape status out of Maryland for armed robbery and was eager to be brought before a magistrate to have his bond set presumably

before the police learned of the Maryland detainer which would have held him in jail.

Based upon this factual history, the Court does not find the Defendant was held for an unreasonable amount of time from the time he was taken into custody and the giving of his inculpatory statement. The approximate 15 hours of being held was necessary because of the extensive investigation and number of victims and witnesses that were interviewed. It went from a one armed robbery case to a multiple armed robbery case. The police "caucused" as the investigation progressed to share what each was learning. A search warrant was obtained in which the firearms were located and also property of the victims' was found. Co-defendants were interviewed and finally the Defendant was interviewed. There was nothing to suggest that any delay took place that was not directly tied to the investigation. There is nothing to suggest any delay was intentional in order to "soften up" the Defendant for his possible interrogation. To the extent the defense argues that the Defendant could have been interviewed before his co-defendants, the Court recognizes someone has to go last.

The Court does not find that the Defendant's testimony regarding the physical conditions of his custody and how he was treated gives rise to a finding that the delay should result in an automatic legal finding that his statement was involuntary under *Vorhauer*.

In summary, considering the totality of the circumstances underlying the delay

between being taken into custody and the incriminating statements, the Court finds the delay reasonable.

Therefore, had the Defendant's trial counsel filed a Motion to Suppress, it would have failed. Hence, the present motion as to this matter fails because no *Strickland* prejudice has been established.

INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO OBJECT TO THE ADMISSION OF A CO-CONSPIRATOR'S STATEMENT

This claim fails to take into consideration that trial counsel did object to the testimony of Bradley about the conversation prior to the double robbery. Bradley testified Rock and Cam had a conversation about "going to rob somebody". Bradley testified he remembered it was Rock who made that statement. DiAngelo also testified that Rock and Cam had a conversation about needing money and committing a robbery. Rock and Cam left and came back with the cell phones and money.

The Court ruled and stands by the ruling that these conversations were by co-conspirators conversing about their plans, therefore they were made in furtherance of the conspiracy. The Defendant said a robbery needs to be done. To the extent Cam's conversation is included in the "*they* had a conversation," it is not hearsay.[10] There

[10] D.R.E. 801(d)(2)(E).

is no *Crawford*[11] issue because the conversation pertaining to planning a robbery was not testimonial.

In the Postconviction Motion the defense also attacks the testimony of Bradley about what occurred after the robbery. Bradley testified that he took guns and cell phones from the Defendant and Cam when they returned to the apartment because "they asked me to hide the items" since they had just committed a robbery. Noteworthy is that the State did not elicit this testimony. Trial counsel was attempting to establish inconsistent statements by Bradley in his efforts to push the robbery onto Cam's shoulders. So, of course, trial counsel did not object to his own tactic.

Finally, this testimony was not inadmissible for the same reasons the plan to commit the robbery was admissible. The conspiracy continued to this point in the effort of the co-conspirators to hide the weapons and fruits of their criminal activity.

INEFFECTIVENESS OF COUNSEL FOR FAILING TO INVESTIGATE AND PRESENT MITIGATING EVIDENCE

As an exhibit to the Motion for Postconviction Relief is a well prepared mitigation report prepared by a "sentencing advocate/mitigation specialist." It is the type of work product the Court would expect to see in a capital sentencing. It is

[11] Crawford v. Washington, 124 U.S. 1354 (2004).

certainly not the type of report the Court expects to see in its everyday caseload of Robbery, Assault, Rape, Burglary, etc.

I do not find that the present practice of criminal law dictates that a mitigation expert should be hired in non-capital cases. Trial counsel did not breech the first *Strickland* prong.

Nor can the Defendant establish any prejudice because the Defendant's sad upbringing by a drug addicted mother and the dysfunction created by that environment was brought to the Court's attention, as it is contained in the presentence report.

What was the driver as to the Defendant's twenty two (22) year sentence? First, the Defendant faced a minimum sentence of sixteen (16) years because of his prior conviction in Maryland for armed robbery. The Court then added six (6) more years and would do so again, regardless of the present mitigation report because the Defendant engages in armed robberies. At the time he committed the robberies the Defendant was on escape status from Baltimore, Maryland where he had been convicted of armed robbery. He learned no lessons in Maryland, and continued his illegal conduct in Delaware.

The Defendant's Postconviction Motion is hereby denied.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

T. Henley Graves

THG/ymp

pc: Prothonotary