

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

<b>STATE OF DELAWARE</b>	)	ID. No. 1210011265
	)	In and for Kent County
v.	)	
	)	RK12-11-0643-01 Ddeal + AF (F)
<b>SEANNE M. GODWIN</b>	)	RK12-11-0644-01 Consp. 2 <sup>nd</sup> (F)
	)	
Defendant.	)	

**COMMISSIONER'S REPORT AND RECOMMENDATION**

**Upon Defendant's Amended Motion for Postconviction Relief  
Pursuant to Superior Court Criminal Rule 61**

Stephen R. Welch, Jr., Esq., Deputy Attorney General, Department of Justice, for  
the State of Delaware.

Patrick J. Collins, Esquire, Collins and Associates, Wilmington, Delaware for  
Defendant.

FREUD, Commissioner  
October 17, 2017

The defendant, Seanne M. Godwin ("Godwin") was found guilty, following a jury trial on December 18, 2013, as charged, of one count of Drug Dealing with Aggravating Factors, 16 *Del. C.* § 4753(2); and one count of Conspiracy in the Second Degree, 11 *Del. C.* § 512. A presentence investigation was ordered by the Court. The State filed a motion to declare Godwin an habitual offender. On

February 26, 2014 the Court granted the State's motion and declared Godwin an habitual offender and sentenced him to mandatory life in prison. A timely Notice of Appeal was filed by Trial Counsel along with a motion to withdraw as counsel. The Delaware Supreme Court granted Trial Counsel's motion to withdraw and appointed Patrick J. Collins, Esq. ("Appointed Counsel") to represent Godwin on appeal.

On Appeal Appointed Counsel raised the following grounds as noted by the Delaware Supreme Court in its opinion:

(1) ... Godwin raises four claims on appeal. First, Godwin argues that his trial counsel was ineffective by failing to file a motion to suppress evidence based on a theory of an improper search and seizure., Second, Godwin contends that the trial court erred when it denied his motion for a mistrial due to an improper comment made by the State in its opening argument. Third, Godwin claims that his trial counsel was ineffective by failing to move for a mistrial after the State introduced testimony regarding his history of drug dealing. Fourth, Godwin contends that his trial counsel was ineffective by failing to question a State witness regarding his plea agreement.<sup>1</sup>

The Supreme Court, on June 30, 2015, affirmed Godwin's conviction and sentence.<sup>2</sup> In its order the court held, concerning Godwin's three claims of

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<sup>1</sup> *Godwin v. State*, 2015 WL 4136922 (Del.), at \*1.

<sup>2</sup> *Id.*

ineffective assistance of counsel that:

(8) The narrow exception to the rule that would allow us to consider Godwin's claims of ineffective assistance of counsel on direct appeal is inapplicable here. The alleged ineffective assistance of Godwin's counsel is far from 'clearly reflected in the Superior Court Proceedings.'<sup>FN 4</sup> We find that these allegations would be better considered in a Superior Court Rule 61 post-conviction proceeding. Accordingly, we deny Godwin's request to consider the merit of these claims.<sup>3</sup>

<sup>FN 4</sup> *Cooke*, 977 A.2d at 848.

As to Godwin's claim that the Court erred in not granting the motion for a mistrial, the Court found the claim meritless and that Godwin suffered no prejudice. Next Godwin filed a *pro se* motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The Court appointed Mr. Collins ("Appointed Counsel") to represent Godwin in his postconviction motion. Prior to the motion being filed, the State offered to agree to Godwin being resentenced because the mandatory life sentence for the charge was excessive. The State however requested that Godwin withdraw his Rule 61 motion. Subsequently the General Assembly passed 11 *Del.C.* § 4214(f) which required resentencing in cases such as Godwin's in certain instances. Following a colloquy with the Court, Godwin decided to proceed with his Rule 61 motion and acknowledged that his resentence under 11 *Del.C.* § 4214(f) might not occur for some time. Next Appointed Counsel filed an amended motion

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<sup>3</sup> *Godwin v. State*, 2015 WL 4136922, at \*2.

for postconviction relief alleging the same three claims of ineffective counsel raised in his direct appeal.

### **FACTS**

Following are the facts as set forth by the Delaware Supreme Court:

(2) On October 16, 2012, Godwin called Tyere Joyner and requested to meet him in Dover, Delaware in order to obtain marijuana that he could resell. Godwin and Joyner met at a Dover hotel where Joyner gave Godwin \$500 worth of marijuana so that Godwin, acting as middle man, could sell the drugs for Joyner. Godwin then rode in Joyner's car to Clairfield where he was to meet an intended purchaser of the marijuana. Once the men arrived, Godwin approached the purchaser and attempted to sell him the marijuana. When the purchaser was unable to produce the money to buy the drugs, Godwin left. Soon thereafter, the purchaser called Godwin and claimed that he now had the money and wanted to set up a meeting at Mapleton Square. Godwin agreed, and he and Joyner drove to Mapleton Square. Once there, Godwin left Joyner's car and got into the purchaser's adjacent vehicle. Godwin gave the purchaser 2 ounces of marijuana, but instead of paying for the drugs, the purchaser robbed Godwin at gunpoint of the marijuana and \$535 cash. He then forced Godwin out of his car and drove away. When Godwin returned to Joyner's car he informed him that he had been robbed. After picking up two other people, Godwin and Joyner began to search for the robber.

(3) The men spotted the robber, now on foot, in the area of Autumn Run Apartments. The robber ran to the front

***State v. Godwin***

ID No. 1210011265

October 17, 2017

of the apartments and approached Delaware State Trooper Nicholas Ciglinsky and Corporal Alexander Argo, who were on patrol in an unmarked Tahoe SUV. The robber informed them that he was being followed by a blue Mitsubishi Lancer. Based on this information, the officers began following the vehicle. After the vehicle failed to stop at a stop sign, the officers attempted to initiate a traffic stop. The vehicle sped up despite the officers' attempt to stop the vehicle. Eventually the vehicle stopped, and the front seat passenger fled. The fleeing occupant was apprehended by Officer Ciglinsky, and subsequently identified as Kendrick Foreman. The driver was identified as Joyner and the other passengers were identified as Godwin and Kelvin Davis.

(4) Once the occupants of the vehicle were secured, the officers conducted a search of the vehicle and found marijuana in the trunk as well as a handgun under the front passenger seat. After being arrested, Godwin provided a statement to police admitting that he and Joyner had attempted to sell marijuana that day, and that he had been robbed by the potential purchaser. He also admitted that they were searching for the robber when the police attempted to stop the vehicle. He denied any knowledge of the handgun found in the vehicle. Godwin was indicted on charges of Drug Dealing and Conspiracy Second Degree.

(5) Godwin was tried in December 2013. In its opening statement, the State mentioned that a handgun was found under Foreman's seat. Godwin's counsel objected and requested a mistrial, which the trial court denied. In order to clarify the alleged improper statement, the State

explained that the handgun belonged to Foreman and that Godwin was unaware that it was in the car. Joyner, Officer Ciglinsky, and Corporal Argo testified for the State. The State also introduced Godwin's recorded statement as evidence. Godwin declined to testify. The jury returned a verdict finding Godwin guilty of both charged offenses. Due to Godwin's status as a habitual offender under 11 *Del. C.* § 4214(b), he was sentenced to life in prison.<sup>4</sup>

### **GODWIN'S CONTENTIONS**

In the amended motion, Appointed Counsel raises three grounds for relief:

- Ground one: Trial Counsel was ineffective for failing to file a motion to suppress the evidence and Mr. Godwin's statement, resulting in prejudice to Mr. Godwin.
- Ground two: Mr. Godwin was prejudiced by assistance of counsel when his lawyer failed to seek a mistrial when the state introduced evidence of prior bad acts.
- Ground three: Trial Counsel was ineffective for failing to impeach the State's main witness with evidence of his plea deal with the State, resulting in prejudice to Mr. Godwin.

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<sup>4</sup> *Godwin*, 2015 WL 4136922, at \*1-2.

## **DISCUSSION**

Under Delaware law, the Court must first determine whether Godwin has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of the postconviction relief claims.<sup>5</sup> Under Rule 61, postconviction claims for relief must be brought within one year of the conviction becoming final.<sup>6</sup> Godwin's initial *pro se* motion was filed in a timely fashion, thus the bar of Rule 61(i)(1) does not apply to the motion. As this is Godwin's initial motion for postconviction relief, the bar of Rule 61(i)(2), which prevents consideration of any claim not previously asserted in a postconviction motion, does not apply either.

Grounds for relief not asserted in the proceedings leading to judgment of conviction are thereafter barred unless the movant demonstrates: (1) cause for relief from the procedural default; and (2) prejudice from a violation of the movant's rights.<sup>7</sup> The bars to relief are inapplicable to a jurisdictional challenge or "to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction."<sup>8</sup>

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<sup>5</sup> *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

<sup>6</sup> Super. Ct. Crim. R. 61(i)(1).

<sup>7</sup> Super. Ct. Crim. R. 61(i)(3).

<sup>8</sup> Super. Ct. Crim. R. 61(i)(5).

Each of Godwin's grounds for relief are premised on allegations of ineffective assistance of counsel and were raised on his direct appeal but the Delaware Supreme Court ruled they should be reviewed by this Court initially. Therefore Godwin has alleged sufficient cause for not having asserted these grounds for relief at trial. He did raise the claims on direct appeal. Godwin's ineffective assistance of counsel claims are not subject to the procedural default rule, in part because the Delaware Supreme Court will not generally hear such claims for the first time on direct appeal. To succeed on a claim of ineffective assistance of counsel, a movant must engage in the two part analysis enunciated in *Strickland v. Washington*<sup>9</sup> and adopted by the Delaware Supreme Court in *Albury v. State*.<sup>10</sup>

The *Strickland* test requires the movant show that counsel's errors were so grievous that his performance fell below an objective standard of reasonableness.<sup>11</sup> Second, under *Strickland* the movant must show there is a reasonable degree of probability that but for counsel's unprofessional error the outcome of the proceedings would have been different, that is, actual prejudice.<sup>12</sup> In setting forth a claim of ineffective assistance of counsel, a defendant must make and substantiate concrete

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<sup>9</sup> 466 U.S. 668 (1984).

<sup>10</sup> 551 A.2d 53, 58 (Del. 1988).

<sup>11</sup> *Strickland*, 466 U.S. at 687; see *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

<sup>12</sup> *Id.*



allegations of actual prejudice or risk summary dismissal.<sup>13</sup>

Generally, a claim for ineffective assistance of counsel fails unless both prongs of the test have been established.<sup>14</sup> However, the showing of prejudice is so central to this claim that the *Strickland* court stated "[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed."<sup>15</sup> In other words, if the Court finds that there is no possibility of prejudice even if a defendant's allegations regarding counsel's representation were true, the Court may dispose of the claim on this basis alone.<sup>16</sup> Furthermore, Godwin must 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>17</sup>

Turning to Godwin's first ground for relief, he claims that his counsel was ineffective for failing to file a motion to suppress the evidence and Godwin's statement. As Trial Counsel makes clear in his affidavit:

With regard to the claim that trial counsel was ineffective

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<sup>13</sup> See e.g., *Outten v. State*, 720 A.2d 547, 557 (Del. 1998) (citing *Boughner v. State*, 1995 WL 466465 at \*1 (Del. Supr.)).

<sup>14</sup> *Strickland*, 466 U.S. at 687.

<sup>15</sup> *Id.* at 697.

<sup>16</sup> *State v. Gattis*, 1995 WL 790961 (Del. Super.).

<sup>17</sup> *Strickland*, 466 U.S. at 689; *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

for failing to file a motion to suppress evidence and Mr. Godwin's statement, prior to trial, counsel considered potential grounds for suppression and determined that the factual circumstances did not support any constitutional claims for suppression of evidence. Specifically, undersigned counsel relied on the probable cause affidavit and the circumstances of the stop, search, detention, and arrest.<sup>18</sup>

Specifically the affidavit of probable cause reads in pertinent part:

3. While attempting to make contact with the suspect vehicle, the vehicle bearing DE Registration 318303 attempted to avoid us by speeding up and ran the stop sign at Post Blvd. And Kesselring Ave. and Kesselring Ave. to S. Governors Ave.

4. While pursuing the suspect vehicle Cpl/1 Argo activated his emergency equipment to signal the suspect vehicle to pull off of the roadway, however the suspect vehicle proceeded without stopping.

5. As the suspect vehicle turned off of S. Governors Ave. and onto Webbs Lane the vehicle came to a stop on Webbs Lane in the area of Autumn Run Apartments. As the suspect vehicle stopped, DEF-Foreman, Kendrick J (DOB 2/17/90) exited out of the passenger side of the vehicle and proceeded to run from the vehicle.

6. I [Trooper Ciglinsky] made contact with DEF-Foreman

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<sup>18</sup> *State v. Godwin*, Del. Super., ID No. 1210011265 (Dec. 21, 2016), DI 71.

and not far from the suspect vehicle and arrested him on contact. He was positively identified by his DE drivers license, bearing # 1554339.

7. Def-Godwin Seanne (DOB 11/20/83) was also located inside the suspect vehicle in the rear passenger seat.<sup>19</sup>

Clearly based on the probable cause affidavit the police alleged that the suspect vehicle failed to stop at a stop sign and continued to flee from the police. Thus the initial reason for the motor vehicle stop<sup>20</sup> was valid. Furthermore the act of fleeing by Godwin's co-defendant gave the police additional reason along with the previously noted allegation by the "robber" who told the police he was being followed gave the police ample reason to search the vehicle and subsequently arrest the occupants leading to Godwin's confession. The following are excerpts of testimony from the preliminary hearing and trial and the statement made by the co-defendant.

From the testimony of Trooper Ciglinsky at the preliminary hearing:

A. Basically I was on patrol with GTF [Governor's Task Force], Troop 3 GTF, and we were in Autumn Run Apartments. We were looking for vehicles, suspicious vehicles.

We were flagged down by a passerby in the area. He came up to us and pointed out a suspect vehicle. We went after

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<sup>19</sup> Appendix to Amended Motion for Postconviction Relief, p. A373.

<sup>20</sup> 11 *Del. C* § 1902; 21 *Del. C*. § 701(b) and 4114.

the suspect vehicle. We came out onto Webb's Lane from Autumn Run Apartments, got behind it. We were just checking it out a little bit and we noticed that the vehicle started to accelerate in an attempt to avoid us.

At that time we activated our emergency our equipment to get the vehicle to pull over. The vehicle did not pull over. We got involved in a little pursuit and then we basically ended up basically right where we started on Webb's Lane and the vehicle finally stopped.

The front passenger exited the vehicle very hastily and I pursued after him; arrested him on site. And then that's when I came into contact with Mr. Goodwin.<sup>21</sup>

From the trial testimony of Trooper Ciglinsky on December 17, 2013:

Q. [DAG Favata] And at some point while you were following the Mitsubishi, the Lancer, did you make the decision to stop it?

A. Well, we - - after we were flagged down, we were caused that - - basically, we wanted to investigate further and figure out why this vehicle was possibly following the passerby/witness, so we basically drove behind the Mitsubishi Lancer and attempted to investigate further.

Q. And what happened while you were doing that?

A. Basically, the vehicle - - as we drove behind the vehicle, the vehicle refused to stop and went through an intersection so we

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<sup>21</sup> *State v. Godwin*, Del. Super., ID No. 1210011265, (Nov. 9, 2012), Tr. at 4.

attempted to initiate a traffic stop. At that time, the vehicle took off on us, and then we effectively pursued behind with activating our emergency equipment to try to get the vehicle to stop.

The vehicle did not stop until at the end of the small pursuit, we ended back up - -we ended back on the front of the Autumn Run Apartments area, and the vehicle finally stopped at the Autumn Run Apartments area in that same area where it began.

Q. And as the Mitsubishi stopped, what happened at that point?

A. As the vehicle stopped, the front passenger side occupant exited the vehicle. And after our vehicle stopped, i effectively got out of the vehicle and chased after the occupant that attempted to run.

Q. Did you catch him [co-defendant Foreman]?

A. That is correct.<sup>22</sup>

From the trial testimony of [co-defendant] Tyree Joyner:

Q. [DAG Favata] What happened then?

A. After I noticed that the car was following me, it sped up behind me at a high rate of speed.

Q. Right. Then what?

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<sup>22</sup> *State v. Godwin*, Del. Super., ID No. 1210011265, (Dec. 17, 2013) Tr. At 64-65.

A. And then everybody in the car basically started panicking saying that everybody start shooting and all this other stuff, so - -

Q. - - everybody what?

A. Everyone in the car started panicking saying that the car behind us was about to start shooting, so I sped up as well. And then, as I was speeding up, then that's when they threw on their lights, and it was the cops.

Q. All right. And when the SUV turned out to the police car, turned on its lights, did it also turn on its siren?

A. I can't recall if they ever threw on a siren. I just remember the lights coming on.

Q. Okay. Did you pull over?

A. No.

Q. Why not?

A. Caught me off guard because I was already in the act of speeding.

Q. Okay. So you took off. Did the police car continue to chase you?

A. Yes.

Q. And did anybody in the car with you indicate whether you should either keep going or stop?

A. I can't really recall.

Q. Okay. At some point, did you stop?

A. Yes.

Q. When you stopped, did everybody stay in the car?

A. No.

Q. Who got out?

A. One of his friends jumped out of the passenger side.

Q. All right. And when he jumped out, what, if anything did he do.

A. He jumped out and left a gun in my car.<sup>23</sup>

From Seanne Godwin's police interview on October 16, 2012:

Officer: Real quickly, what kind of car was he in?

Seanne Godwin: It was a Blue Chevy Malibu.

Officer: Was it tinted windows or anything?

Seanne Godwin: Yeah, the dude that you all had stopped by the Village...that was him.

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<sup>23</sup> *State v. Godwin*, Del. Super., ID No. 1210011265, (Dec. 17, 2013) Tr. at 43-44.

Officer: Okay.

Seanne Godwin: And the reason why we ran is because I was telling like, 'Yo stop the car that's him right there.' I wanted to get out right here and there and to go fight him because I knew it was him. That's why he started running. He seen me and he started running. But then whenever you seen him go to his vehicle, I thought it was his peoples and he was getting into the car with them.

So we went around the corner, so whenever we made that turn, we saw your guys come right behind us and that's when we started speeding like, 'Oh shit, they're getting ready getting ready to come after us now with guns.' So then we just kept going and once we seen the lights, we was like, 'Nah, it's the cops. The boy in the front was like, 'Just keep going, just keep going.'

I didn't know if he was dirty or if he had any drugs on him, I don't know.

Officer: Now you said, did you call him? The front passenger?

Seanne Godwin: Yes.

Officer: Okay.



Seanne Godwin: I know all of them.<sup>24</sup>

Clearly the fact that the driver ran several stop signs and failed to stop after the police emergency lights were activated gave the police ample reason to make the initial motor vehicle stop.<sup>25</sup> The additional fact that one of the vehicle occupants fled once the vehicle was stopped and the weapon was located gave the police justification under the circumstances to further search the vehicle leading to the discovery of illegal drugs. All these factors combined gave the police reasonable suspicion to take Godwin into custody and question him following a *Miranda* warning. Godwin's argument that the fact that the police vehicle was unmarked and that they thus fled the SUV thinking it was the robber's friends is unpersuasive since as the trial testimony and Godwin's statement to police shows the suspects clearly and knowingly ran the initial stop sign as well as continued to flee once it was apparent that they were being pursued by the police. Under all these circumstances not filing a motion to suppress was clearly not ineffective assistance of counsel. This claim is meritless.

The second claim asserted by Appointed Counsel is that Godwin's Trial Counsel acted in a constitutionally ineffective manner when he failed to request a mistrial after the State introduced evidence of prior bad acts. In his affidavit, Trial Counsel explains that the defense did not contest that Godwin had purchased

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<sup>24</sup> Appendix to Amended Motion for Postconviction Relief at A39-40.

<sup>25</sup> 21 *Del. C.* § 4103.

marijuana from Joyner; rather, “it was the nature of the transaction that was contested.” So there was no objection to questions about Godwin buying marijuana from Joyner, while there were objections to sell it to other people.<sup>26</sup> Ultimately, there was no clear testimony presented to the effect that Godwin on previous occasions had bought marijuana from Joyner to sell to other people; at most, there was a suggestion that this may have occurred.<sup>27</sup>

It seems to have been part of Trial Counsel’s trial strategy to suggest that Joyner was a drug dealer who had sold marijuana to Godwin, but that there was insufficient evidence to establish that Godwin himself sold marijuana. In his closing, Trial Counsel himself mentioned several times that Joyner had previously sold marijuana to Godwin. He went on to argue that “what you didn’t hear in this trial was evidence of drug dealing by Seanne Godwin.”<sup>28</sup> In other words, Godwin was a marijuana user – thus explaining his involvement with Joyner – but was not someone who sold marijuana. Although this approach was ultimately not successful, it appears to have been a reasonable trial strategy.

Additionally, to the extent that objectionable 404(b) evidence actually was presented to the jury, there is Delaware case law suggesting that this may not be improper in a drug case in which the defendant’s involvement in the sale or delivery

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<sup>26</sup> Trial Transcript, pp. A-24-27.

<sup>27</sup> *Id.*

<sup>28</sup> Trial Transcript, p. B-45.

of drugs is at issue.<sup>29</sup>

The third ground for relief is that Trial Counsel was ineffective at trial in that he failed to impeach the State's primary witness, Joyner, with the evidence of the Plea Agreement which he had reached with the State. Joyner pled to Drug Dealing and Conspiracy Second Degree and agreed to testify truthfully at Godwin's trial. This plea was entered on July 29, 2013.<sup>30</sup>

As Trial Counsel points out in his affidavit, Joyner testified repeatedly at trial that he was a drug dealer who sold marijuana.<sup>31</sup> He testified that he was in jail for Drug Dealing.<sup>32</sup> Joyner testified in detail that he had provided two ounces of marijuana to Godwin, who was then supposed to sell the marijuana to a third party.<sup>33</sup> In light of all this testimony from Joyner, it would have added little to the jury's knowledge of the facts to learn that, in connection with this particular case, he had pled guilty to Drug Dealing.

With regard to the Conspiracy Second Degree charge, Trial Counsel in effect states in his affidavit that it would have undermined his strategy at trial to point out

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<sup>29</sup> See, e.g., *McCray v. State*, 15 A.3d 217 (Del 2011)(table); *Campbell v. State*, 974 A.2d 156 (Del. 2009); *Pennewel v. State*, 947 A.2d 1123 (Del. 2008)(Table); *Ruiz v. State*, 820 A.2d 372 (Del. 2003)(table); *Williams v. State*, 796 A.2d 128 (Del. 2002).

<sup>30</sup> See Appendix to Amended Motion for Postconviction Relief at pp. A-381-382.

<sup>31</sup> Trial transcript at pp. A-24, 52.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* At pp. A-25, 29.

that Joyner had plead guilty, under oath, to conspiring with Godwin to commit the felony offense of Drug Dealing.<sup>34</sup> As previously noted, the defense strategy at trial was to suggest that Godwin used marijuana but did not sell it. In pursuit of this strategy, Trial Counsel brought out during Joyner's cross-examination that he and Godwin were not "business partners" and that Joyner was a "customer" of his whom he had seen using drugs previously.<sup>35</sup> Joyner testified that he provided marijuana to Godwin with the expectation that he would receive \$500.00 in return, but seemed to hold back from admitting that he ever had an agreement with Godwin to sell drugs together.<sup>36</sup> Joyner characterized their relationship as follows: "I sold weed to Godwin when he called me and asked me for it."

Cross-examination that brought out that Joyner had admitted under oath that he conspired with Godwin to sell marijuana would have undermined this entire line of questioning. In his closing argument, Trial Counsel expressly argued that Godwin never entered into an agreement with Joyner to sell marijuana.<sup>37</sup> It therefore would have made little sense for Trial Counsel to bring out evidence which tended to show that there had in fact been such an agreement. Godwin himself was actually charged in the same Conspiracy Second Degree count to which Joyner pled guilty. For this

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<sup>34</sup> Note: Joyner's Plea Agreement and the indictment to which he pled are located in the Appendix to Amended Motion for Postconviction Relief at pp. 377, 381.

<sup>35</sup> Trial Transcript, p. A-54.

<sup>36</sup> *Id.* At p. A-55.

<sup>37</sup> Trial Transcript, pp. B-46, 47.

reason, too, it would have made little sense for Trial Counsel to have brought out that one participant in the conspiracy – Joyner – had admitted guilt to this exact charge.

Since Trial Counsel wanted to keep the jury from learning that Joyner pled guilty to Conspiracy Second degree, it also made sense for him not to bring out that Joyner had pled to Drug Dealing. If he had attempted to cross-examine Joyner with the Plea Agreement that he had signed, he would have opened the door to questioning about the guilty plea to Conspiracy Second Degree which was part of the same Plea Agreement. Beyond this, as previously noted, evidence that Joyner pled to Drug Dealing would have been cumulative and would have added little if anything to the jury's understanding of the case. The jury was told in no uncertain terms that Joyner was a drug dealer – and no one denied this.

### **CONCLUSION**

After reviewing the record in this case, it is clear that Godwin has failed to avoid the procedural bars of Rule 61(i). A review of his counsel's affidavit clearly shows that counsel represented Godwin in a competent fashion and was not ineffective. Additionally, Godwin has failed to demonstrate any concrete prejudice. Consequently, I recommend that Godwin's motion be denied as procedurally barred by Rule 61(i)(3) for failure to prove cause and prejudice.

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/s/ Andrea M. Freud

Commissioner

AMF/dsc