IN THE SUPERIOR COURT OF THE STATE OF DELAWAR

STATE OF DELAWARE	)	
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	)	
	)	
v.	)	
	)	**ID No. 1512004805**
	)	
	)	
MARK TAYLOR,	)	
	)	
	)	
Defendant.	)	

OPINION

Submitted: August 14, 2017
Decided: November 30, 2017

Upon Defendant's Motion for Postconviction Relief, **DENIED.**

Rebecca E. Anderson, Esquire, Deputy Attorney General, Delaware Department of Justice, 114 E. Market St. Georgetown, DE 19947, *Attorney for the State of Delaware*.

Edward C. Gill, Esquire, 16 N. Bedford Street, PO Box 824, Georgetown Delaware, 19947, *Attorney for Defendant.*

BRADY, J.

I. INTRODUCTION & PROCEDURAL HISTORY

Before the Court is a Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61") filed by Mark Taylor ("Defendant"). Defendant alleges ineffective assistance of trial counsel.

On December 7, 2015, Defendant was arrested for multiple charges of possession of a controlled substance; multiple charges of manufacture, deliver, or possession with intent to deliver a controlled substance; one assault charge; one charge for resisting arrest; one charge of tempering with physical evidence; and one charge of possession of drug paraphernalia. Counsel was appointed and on December 31, 2015 filed requests for discovery. On January 5, 2016, before discovery was provided, Defendant pled guilty to Drug Dealing in Tier 4 quantity, and Assault in the Second Degree. Defendant did not file for an appeal. On September 8, 2016, Defendant, through retained counsel, filed a Motion for Postconviction Relief. This Court requested Defendant's trial counsel file a Rule 61(g) Affidavit to address Defendant's claims, and received the Affidavit on May 2, 2017.[1] The State notified the Court on May 16, 2017 that it did not intend to file a Response to Defendant's Motion.[2] On August 11, 2017, the Court received Defendant's reply to trial counsel's Affidavit. This is the Court's decision.

II. PARTIES' CONTENTIONS

Defendant asserts trial counsel was ineffective in several ways. Defendant contends trial counsel "did not provide any effective assistance of counsel whatsoever."[3] Defendant contends had trial counsel been effective, he would not have taken the plea and would have pursued

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[1] Trial counsel filed a Rule 61(g) Affidavit in a letter format, addressing Defendant's claims of ineffective assistance of counsel, *State v. Taylor*, ID. 01512004805, Docket 21 (May 1, 2017) (hereinafter, "Trial counsel Aff.").

[2] In all this judge's 40-year career, I am unaware of any other case in which the State declined to defend a conviction, unless they were conceding error. The fact that they did so, without confessing error, is remarkable.

[3] Def's Mot. for Postconviction Relief, *State v. Taylor*, ID. 01512004805, Docket 13, at 4 (Sept. 8, 2016) (hereinafter, "Def's Mot.").

several legal issues. The first issue Defendant raises is that "[t]he seizure in this case was clearly unreasonable under both the Delaware and United States Constitution."

Defendant claims trial counsel was ineffective for not reviewing any recordings of the in-car cameras or body cameras. Defendant claims the lack of review of the cameras' contents was prejudicial to him.

Defendant contends trial counsel did not raise issues with regards to three search warrants, and that proper suppression motions should have been filed because the warrants lacked probable cause and were "illegally done in violation of the Delaware and United States Constitution."[4]

Defendant lastly claims trial counsel failed to inform him of the issues involving the Office of the Chief Medical Examiner ("OCME")/Division of Forensic Science ("DFS"). Defendant contends if he "had known about the problems occurring in OCME/DFS he would not have agreed to take the plea and thus was prejudiced.

Trial counsel avers that Defendant wanted to enter a plea the day trial counsel first met the Defendant for his preliminary hearing on December 17, 2015.[5] Trial counsel avers he advised the Defendant that it would be in Defendant's best interest to allow him more time to acquire and review discovery material before making any decision about a plea.[6] Trial counsel contends he "strongly advised the Defendant against taking a plea until I had an opportunity to conduct a proper and thorough review of all discovery material."[7] Trial counsel avers that Defendant insisted upon entering a plea before affording him an opportunity to acquire any video and/or audio recordings, and/or, copies of any warrants. Lastly, trial counsel contends he was

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[4] *Id.*
[5] Trial counsel Aff., at 1.
[6] *Id.*
[7] *Id.* at 2.

not aware of any ongoing problems affecting the OCME/DFS at the time, and that he "would have been ineffective in counseling Movant if I would have inferred that any past problems experienced by the then OCME still existed under DFS."[8]

III. APPLICABLE LAW

Before addressing the merits of Defendant's claims, the Court must apply the procedural bars set forth in Superior Court Criminal Rule 61(i) in effect at the time the motion was filed.[9] Pursuant to that version of Rule 61, this Court must reject a motion for postconviction relief if it is procedurally barred. That Rule provides that a motion is procedurally barred if the motion is untimely, repetitive, a procedural default exists, or the claim has been formerly adjudicated.[10] Rule 61(i)(1) provides that a motion for postconviction relief is time barred when it is filed more than one year after the conviction has become final or one year after a retroactively applied right has been newly recognized by the United States Supreme Court or by the Delaware Supreme Court.[11] Rule 61(i)(2) provides that a motion is repetitive if the defendant has already filed a motion for postconviction relief and that a claim is waived if the defendant has failed to raise it during a prior postconviction proceeding, unless "consideration of the claim is warranted in the interest of justice."[12] Rule 61(i)(3) bars consideration of any claim "not asserted in the proceedings leading to the conviction" unless the petition can "show cause for relief from the procedural default" and "prejudice from violation of the movant's rights."[13] Rule 61(i)(4) provides that any claim that has been adjudicated "in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in the federal habeas corpus

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[8] *Id.*
[9] *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).
[10] *See* Super. Ct. Crim. R. 61(i)(1)-(4).
[11] Super. Ct. Crim. R. 61(i)(1).
[12] Super. Ct. Crim. R. 61(i)(2).
[13] Super. Ct. Crim. R. 61(i)(3).

proceedings" is barred "unless reconsideration of the claim is warranted in the interest of justice."[14]

To prevail on claims of ineffectiveness assistance of counsel, the defendant must meet the two-prong test set forth by the United States Supreme Court.[15] In the context of a guilty-plea challenge, a defendant must establish that: (i) his counsel's representation was deficient in that it fell below an objective standard of reasonableness; and (ii) counsel's actions were so prejudicial " 'that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial.'"[16] When assessing counsel's performance, a court must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."[17] Additionally, defendant must show that the deficiencies in counsel's performance were prejudicial to the defense,[18] in that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.[19]

The Court finds no procedural bars to the claims of effective assistance of counsel.

IV. DISCUSSION

The Court finds trial counsel was not ineffective for failing to review police camera recordings, and not raising issues with the search warrants. The Court gives credence to trial counsel's averments that trial counsel advised the Defendant that it would be in Defendant's best interest if he took more time to allow counsel to review discovery material before making any

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[14] Super. Ct. Crim. R. 61(i)(4).
[15] *Strickland v. Washington*, 466 U.S. 688 (1984).
[16] *Albury v. State*, 551 A.2d 53, 60 (1988) (quoting *Hill v. Lockhart*, 474 U.S. at 58, 106 S.Ct. at 370).
[17] *Strickland,* 466 U.S. 688 at 688.
[18] *Id.* at 692.
[19] *Id.* at 694.

decision about a plea.[20] That the Defendant chose to freely and voluntarily enter a plea despite being so advised is his prerogative.[21]

The Court further finds that trial counsel was not ineffective for failing to inform of Defendant of the issues in the offices of OCME. While the Defendant alleges in his petition that "problems have occurred and persisted in the office of OCME/DFS," the problems documented and addressed in an investigation occurred in the OCME. DFS was established following discovery of those problems in the OCME and testing of controlled substances was removed from OCME and placed in the jurisdiction of DFS in 2014. The Court is unaware of any claims related to testing practices in DFS. Further, while Defendant asserts that he would not have taken a plea had he known about the "problems involving the OCME/DFS,"[22] he does not articulate any relationship between the problems within the OCME and his particular case, nor how those problems affected his plea. Any previous problems that occurred at the offices of the OCME had no apparent relevance to Defendant's case.

Even if the trial counsel's failure to inform the Defendant of the problems with OCME was erroneous, the Court finds the Defendant suffered no prejudice. The Supreme Court of Delaware in *Aricidiacono v. State* "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.'"[23] The precise argument Defendant makes here has been rejected by the State's highest legal authority.

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[20] Trial Counsel Aff, at 1.

[21] The Court reviewed the Truth-In-Sentencing Guilty Plea Form and finds that the Defendant's plea was voluntary, knowing and intelligent. *See* Truth-In-Sentencing Guilty Plea Agreement, *State v. Mark Taylor*, ID: 1512004805 (Jan. 5, 2016). Defendant marked "Yes" to the question "Have you freely and voluntarily decided to plead guilty to the charges listed in your written plea agreement?"[21] Defendant marked "No" to the question "Has your lawyer, the State, or anyone threatened or forced you to enter this plea?" Defendant checked the box indicating that he understood the form, and then signed it.

[22] Def's Mot., at 4.

[23] *State v. Binaird*, 2016 WL 358990 (citing *Aricidiacono v. State*, 125 A.3d 677 (Del. 2015)).

Defendant's claim of ineffective assistance of counsel on this ground must fail, as it is unsubstantiated.

V. CONCLUSION

For the aforementioned reasons, Defendant's Motion for Postconviction Relief is **DENIED**.

IT IS SO ORDERED.

M. Jane Brady
Superior Court Judge