IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	)	ID. No. 1406008686
	)	In and for Kent County
v.	)	
	)	RK14-06-0434-01
TURHAN BLENMAN,	)	RK14-06-0435-01
	)	PFBPP PABPP
Defendant.	)	
	)	

COMMISSIONER'S REPORT AND RECOMMENDATION

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

Jason C. Cohee, Esquire, Deputy Attorney General, Department of Justice, for the State of Delaware.

Turhan Blenman, *Pro se.*

FREUD, Commissioner
December 11, 2018

The defendant, Turhan Blenman ("Blenman") was found guilty as charged, following a Bench trial on June 16, 2015, of two counts of Possession of a Firearm by a Person Prohibited, 11 *Del. C.* § 1448(a)(9). Prior to trial the State dismissed a number of additional offenses including Drug Dealing and Possession of a Firearm During Commission of a Felony. On August 27, 2017, the Court sentenced Blenman to six years minimum mandatory time incarceration followed by one year of probation.

A timely Notice of Appeal to the Delaware Supreme Court was filed. Blenman's Trial Counsel filed a brief and motion to withdraw pursuant to Supreme Court Rule 26(c). In the motion to withdraw, appellate counsel represented that she conducted a conscientious review of the record and concluded that no meritorious issues existed. By letter, counsel informed Blenman of the provisions of Rule 26(c) and attached a copy of the motion to withdraw and accompanying brief. Blenman was informed of his right to supplement his attorney's presentation. Blenman, *pro se*, raised eight issues for appeal for the Supreme Court to consider, which the Supreme Court classified as follows:

> (10) Blenman's arguments on appeal may be summarized as follows: (i) the State violated *Brady v. Maryland* and Superior Court Rule 16 by failing to collect the blanket wrapped around the rifles, take photographs of the first floor bedroom closet where the rifles were discovered, and collect the clothes in the closet; (ii) he was denied his right to challenge the search warrant; (iii) he was denied his right to a speedy trial; (iv) he was not given the opportunity to examine the evidence offered by the State at trial; (v) the State failed to provide him with exculpatory evidence in a timely manner; (vi) he was denied his right to present exculpatory evidence; (vii) there was insufficient evidence to support his convictions; and (vii) ineffective assistance of counsel.[1]

On October 7, 2016, Blenman filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61. On October 28, 2016 he filed a motion for

[1] *Blenman v. State*, 134 A.3d 760 (TABLE), 2016 WL 889551, at *2 (citations omitted).

appointment of counsel. He raised four grounds for relief including ineffective assistance of counsel. On November 18, 2016, the Court granted the motion for appointment of counsel, and on May 30, 2107, Brian T. N. Jordan, Esq. ("Appointed Counsel") was appointed to represent Blenman. After an extremely thorough and conscientious review of the facts, the record and the law in the case, Appointed Counsel filed a motion to withdraw as counsel on October 16, 2017, along with a memorandum in support of the motion, having concluded that the motion was wholly without merit and that no meritorious grounds for relief existed. Thereafter, on February 13, 2018, the Court requested that Appointed Counsel supplement his motion to further address one of Blenman's claims. The supplement was filed by Appointed Counsel on March 5, 2018. Blenman was sent a copy of the motion to withdraw and given 30 days to file a response. Appointed Counsel's motion to withdraw was granted by the Court on March 23, 2018.[2]

Next Blenman moved to amend his *pro se* motion for postconviction relief on July 16, 2018, after his Trial Counsel and the State had responded to his initial motion. After several revised brief schedules the matter finally completed briefing and was sent for decision.

FACTS

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

> (4) The basic facts from the trial record that explain the evidence presented at trial provide context for an examination of Blenman's many claims of potential error.

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[2] *State v. Blenman*, Del. Super., ID No. 1405008686, Primos, J. (March 23, 2018)(ORDER).

One key body of evidence involved testimony regarding the search during which weapons were found at Blenman's house. The trial transcript in this case reflects that, on June 11, 2014, the Dover Police Department executed a search warrant for a house at 28 Vera Way in Dover, Delaware. When the police entered the house, a small child, the child's mother, and Blenman's mother were present. Steven Huey and Chrissy Guzman, who was Blenman's girlfriend, arrived while the police were searching the house.

(5) The first floor of the house contained a living room, kitchen, bedroom, and bathroom. Corporal Aaron Dickinson testified that he found multiple pieces of mail bearing Blenman's name and a different address in the first floor bedroom. Corporal Dickinson also found a business card with Blenman's name. Corporal Dickinson did not recall if he saw mail bearing a name other than Blenman's name.

(6) Corporal Dickson testified that he looked in a closet located in the first floor bedroom, but did not search it. Corporal Dickinson did not recall if he saw women's clothing or a purse in the first floor bedroom. An inventory of the items seized during the search reflected that a purse was found in the first floor bedroom. Corporal Dickinson was also on the second floor of the house, but only recalled searching a closet where he found a postage box addressed to Blenman at 28 Vera Way. According to Detective Anthony DiGirolomo, there was a small bedroom on the second floor with a small bed and a child's belongings and another room that was basically empty.

(7) Detective Christopher Bumgarner testified that when he

looked in the closet in the first floor bedroom he saw a rifle barrel sticking out of a blanket. Two rifles were wrapped in the blanket. Detective Bumgarner testified that the closet contained men's clothing and that he did not recall seeing any women's clothing in the closet or house. Detective DiGirolomo indicated that most of the clothing in the first floor bedroom belonged to a man, but there were possibly a few items of women's clothing. He did not see any female toiletries in the bathroom off of the first floor bedroom. No ammunition was found in the house.

(8) The other key evidence against Blenman was his own recorded statement. Detective DiGirolomo testified at trial that Blenman eventually arrived at the house during the search and was taken into custody. After receiving *Miranda* warnings, Blenman chose to speak to Detective DiGirolomo. The interview was played at trial. During the interview, Blenman stated that he and his son were the only people who lived at 28 Vera Way. Blenman further stated that he had paid cash for the rifles and that the rifles had not been used in any crimes.

(9) The defense did not call any witnesses at trial. The parties stipulated that Blenman was a person prohibited from owning or possession firearms. The Superior Court found that Blenman was guilty of PFBPP. This appeal followed.[3]

BLENMAN'S CONTENTIONS

In his initial motion, Blenman raises the following grounds for relief:

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[3] *Blenman v. State*, 134 A.3d 760 (TABLE), 2016 WL 88955, 1 at **1-2.

Ground one:	Ineffective assistance of counsel for failing to file a motion to suppress evidence.
Ground two:	Blenman alleges the search warrant was inadequate because it did not list firearms as something sought.
Ground three:	Blenman alleges that there was inadequate testing of the heroin found at the scene.
Ground four:	Ineffective assistance of counsel for failing to file a motion to suppress.

In his amended motion Blenman raised the following claims:

(a) Blenman claims the State failed to produce the weapons for inspection.

(b) Blenman argues that a "Lolly" instruction should have been given.

(c) Blenman argues his attorney was ineffective for not objecting to his confession being presented at the trial.

DISCUSSION

Under Delaware law, the Court must first determine whether Blenman has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may

consider the merits of the postconviction relief claims.[4] Under Rule 61, postconviction claims for relief must be brought within one year of the conviction becoming final.[5] Blenman's initial motion was filed in a timely fashion, thus the bar of Rule 61(i)(1) does not apply to the motion.[6] As this is Blenman'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.[7] 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."[8]

Each of Blenman's grounds for relief to some extent are premised on allegations of ineffective assistance of counsel. Therefore, Blenman has alleged

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[4] *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

[5] Super. Ct. Crim. R. 61(i)(1).

[6] The State argues that Blenman's amended motion should be dismissed or time barred because he could have and failed to raise these claims initially. While I agree in theory with the State that the claims in the amended motion are in fact time barred I will nonetheless address them for the benefit of the Court.

[7] Super. Ct. Crim. R. 61(i)(3).

[8] Super. Ct. Crim. R. 61(i)(5).

sufficient cause for not having asserted these grounds for relief at trial and on direct appeal.

Blenman's Ground (a) from his amended motion is basically a restatement of an argument he previously raised in his direct appeal. Superior Court Criminal Rule 61(i)(4) bars any ground for relief that was formerly adjudicated unless reconsideration of the claim is warranted in the interest of justice.[9] Blenman raised the claim on appeal and the Delaware Supreme Court found it meritless. Blenman has made no attempt to argue why reconsideration of this claim is warranted in the interest of justice. The interest of justice exception of Rule 61(i)(4) has been narrowly defined to require that the movant show that "subsequent legal developments have revealed that the trial court lacked the authority to convict or punish" him.[10] Blenman has made no attempt to demonstrate why these claims should be revisited. This Court is not required to reconsider Blenman's claim simply because it is "refined or restated."[11] For this reason, this ground for relief should be dismissed as previously adjudicated under Rule 61(i)(4).

Blenman'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. For this reason, many

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[9] Super. Ct. Crim. R. 61(i)(4).

[10] *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996) (quoting *Flamer v. State*, 585 A.2d 726, 746 (Del. 1990)).

[11] *Riley v. State*, 585 A.2d 719, 721 (Del. 1990).

defendants, including Blenman, allege ineffective assistance of counsel in order to overcome the procedural default. "However, this path creates confusion if the defendant does not understand that the test for ineffective assistance of counsel and the test for cause and prejudice are distinct, albeit similar, standards."[12] The United States Supreme Court has held that:

> [i]f the procedural default is the result of ineffective assistance of counsel, the Sixth Amendment itself requires that the responsibility for the default be imputed to the State, which may not 'conduc[t] trials at which persons who face incarceration must defend themselves without adequate legal assistance;' [i]neffective assistance of counsel then is cause for a procedural default.[13]

A movant who interprets the final sentence of the quoted passage to mean that he can simply assert ineffectiveness and thereby meet the cause requirement will miss the mark. Rather, to succeed on a claim of ineffective assistance of counsel, a movant must engage in the two part analysis enunciated in *Strickland v. Washington*[14] and adopted by the Delaware Supreme Court in *Albury v. State*.[15]

The *Strickland* test requires the movant show that counsel's errors were so

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[12] *State v. Gattis*, 1995 WL 790961 (Del. Super.).

[13] *Murray v. Carrier*, 477 U.S. 478, 488 (1986).

[14] 466 U.S. 668 (1984).

[15] 551 A.2d 53, 58 (Del. 1988).

grievous that his performance fell below an objective standard of reasonableness.[16] 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.[17] In setting forth a claim of ineffective assistance of counsel, a defendant must make and substantiate concrete allegations of actual prejudice or risk summary dismissal.[18]

Generally, a claim for ineffective assistance of counsel fails unless both prongs of the test have been established.[19] 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."[20] 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.[21] Furthermore, Blenman must rebut a "strong presumption" that Trial Counsel's representation fell within the "wide range of reasonable professional

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[16] *Strickland*, 466 U.S. at 687; *see Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

[17] *Id.*

[18] *See* e.g., *Outten v. State*, 720 A.2d 547, 557 (Del. 1998) (citing *Boughner v. State*, 1995 WL 466465 at *1 (Del. Supr.)).

[19] *Strickland*, 466 U.S. at 687.

[20] *Id.* at 697.

[21] *State v. Gattis*, 1995 WL 790961 (Del. Super.).

assistance," and this Court must eliminate from its consideration the "distorting effects of hindsight when viewing that representation."[22]

Turning briefly to Blenman's specific claims he makes a number of allegations that Trial Counsel acted ineffectively at trial. In Grounds one and four Blenman states Trial Counsel was ineffective because she did not move to suppress or argue the motion to suppress he prepared. Blenman states the Dover Police Department did not have probable cause to search his property.

The Dover Police Department established probable cause when it corroborated the informant's tips through controlled buys. Delaware courts "have previously held that '[t]he probable cause standard is incapable of precise definition . . . because it deals with probabilities and depends on the totality of the circumstances.' The substance of all probable cause definitions, however, is a 'reasonable ground for belief of guilt,' which must be particular to the person seized. Probable cause exists where the facts and circumstances within the arresting officer's knowledge, of which he has trustworthy information, are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been committed.[23]

The Supreme Court of Delaware "has held that an informant's tip, if sufficiently corroborated, can form the basis for probable cause even if nothing is

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[22] *Strickland,* 466 U.S. at 689; *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

[23] *Stafford v. State*, 59 A.3d 1223, 1229 (Del. 2012) (*citations omitted*).

known about the informant's credibility."[24] In *Holden*, the Supreme Court found probable cause existed when two past proven and reliable informants both told the police the defendant was selling oxycodone (and other drugs) from his home in Newark where he lived with his girlfriend and was driving a white Chrysler.[25] The police corroborated part of this tip by checking the defendant's address and then observing him leave the property in a white Chrysler.[26] The tip was further corroborated when police stopped someone leaving the defendant's residence and discovered oxycodone pills.[27] That was enough to establish probable cause the defendant was selling oxycodone from his house.[28] In another case, a new informant tipped off the police that a known heroin dealer would be returning to Delaware with a new shipment.[29] Based on the detective's "own observation, as well as upon information receive from several reliable informants, police Detective James Stallings knew the defendant, Allan M. Tatman, to be a heroin dealer."[30] When he received the

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[24] *Dendy v. State*, 1989 Del. LEXIS 467, *7 (Del. 1989).

[25] *State v. Holden*, 60 A.3d 1110 (Del. 2013).

[26] *Id.*

[27] *Id.* at 1115.

[28] *Id.*

[29] *Tatman v. State* 494 A.2d 1249 (Del. 1985, *see also Jacoby v. State*, 1989 Del. LEXIS 465 (Del. 1989).

[30] *Id.*

tip, the detective checked with other past proven informants about its accuracy.[31] The Court found the detective had enough probable cause to arrest the defendant because "[t]he attendant facts and circumstances in the present case fully support the reliability of the informant's tip."[32]

Here, Trial Counsel's decision not to file a motion to suppress or argue the motion Blenman prepared did not prejudice him because it would have been denied. Under the case law cited above, the detectives who obtained the search warrant established probable cause because they corroborated the confidential informant's information through two controlled buys and their own observation. Both buys were characterized by the detectives searching the informant's vehicle for illegal drugs and money before and after the sale; the detectives listened to the buys through a transmitting device the informant wore; and the detectives watched the transactions. State and federal courts have already ruled that activity is enough to establish probable cause for a warrant. Therefore, without addressing whether trial counsel should have moved to suppress the evidence, Blenman was not prejudiced because the court would have denied the motion.

Blenman was not prejudiced by Trial Counsel's failure to argue his Motion to Suppress. Blenman's motion argued the evidence had to be suppressed because he was not notified the informant was wearing a wiretap. The law Blenman cites, however, 11 *Del.* C § 1336, had been repealed before this case began. It could not,

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[31] *Id.*

[32] *Id.*

therefore, provide a basis for any court to grant the motion.

In Ground two Blenman alleges that firearms were not on the face of the search warrant and Trial Counsel should have objected to this evidence being admitted at trial. However, the search warrant permitted a search of Blenman and his residence. Moreover, paragraph 16(h) of the Probable Cause Affidavit specifically lists firearms. Thus, there was no basis for objecting to the admission of the firearms found a the residence during the execution of the search warrant.

As to Ground three, it should be denied. At the time the search warrant was executed, Dover Police discovered and seized twelve bags of suspected heroin at the residence and nine bags of suspected heroin on Blenman's person. The suspected heroin was transported to the Dover Police Station, processed there by Det. Hurd and reported to have tested positive for heroin. In a post-*Miranda* interview, Blenman admitted that he used heroin and also sold it out of his residence. In addition to the person prohibited charges, Blenman was charged with two counts of possession of a firearm during the commission of a felony, drug dealing, possession of drug paraphernalia and endangering the welfare of a child. No further testing of the heroin was undertaken, and the State *nolle prossed* all but the person prohibited charges before trial. There was no testimony concerning the alleged drugs at trial and there was no attempt to admit the suspected drugs at trial. Accordingly, there was no violation of Defendant's due process rights.

In Blenman's amended motion Ground (b) he argues that a "Lolly" instruction should have been given. This is a moot point as this was a bench trial and no jury instructions were given because there was no jury. Additionally, the Supreme Court

addressed this "blanket" issue and expressly rejected it.[33]

In Ground (c) of his amended motion, Blenman claims Trial Counsel should have objected to his redacted confession because there were technical difficulties playing the statement and that he was under the influence when he was interviewed. Technical difficulties arise from time to time. Trial Counsel, in her affidavit, said there were no difficulties in hearing Blenman's confession. Additionally, the trial judge had the recording available to review as it was entered into evidence. In her opinion, Trial Counsel did not believe that the Blenman was inebriated during the interview based on his behavior and speech. Therefore, this ground should be denied as unfounded.

Following a complete review of the record in this matter, it is abundantly clear that Blenman has failed to allege any facts sufficient to substantiate his claim that his attorney was ineffective. I find Trial Counsel's affidavit and Appointed Counsel's motion to withdraw, in conjunction with the record, more credible than Blenman's self-serving claims that his Trial Counsel's representation was ineffective. Blenman's Trial Counsel clearly denies the allegations. Furthermore, Appointed Counsel thoroughly reviewed the record in this case and concluded that none of Blenman's claims were meritorious and that no other meritorious claims could be found.

CONCLUSION

After reviewing the record in this case, it is clear that Blenman has failed to avoid the procedural bars of Superior Court Criminal Rule 61(i). A review of his

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[33] *Blenman v. State,* 134 A.3d 760 (TABLE), 2016 WL 889551, at *5.

Trial Counsel's affidavit, Appointed Counsel's motion to withdraw and the record clearly shows that counsel represented Blenman in a competent fashion and was not ineffective. Additionally, Blenman has failed to demonstrate any concrete prejudice. Consequently, I recommend that Blenman's motion be denied as procedurally barred by Rule 61(i)(3) for failure to prove cause and prejudice and previously adjudicated under Superior Court Criminal Rule 61(i)(4).

/s/ Andrea M. Freud
Commissioner

AMF/dsc
oc: Prothonotary