IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	ID. No. 1812010757
	)	
v.	)	RK19-09-0123-01 Drug Dealing (F)
	)	LIO: DDeal Tier 4
GARY V. STANLEY,	)	RK19-09-0124-01 CCDW (F)
	)	LIO: PFBPP PABPP
Defendant.	)	RK19-09-0125-01 PFBPP PABPP (F)

COMMISSIONER'S REPORT AND RECOMMENDATION

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

Lindsay A. Taylor, Esq., Deputy Attorney General, Department of Justice, for the State of Delaware.

Gary V. Stanley, *Pro se.*

FREUD, Commissioner
August 19, 2021

The defendant, Gary V. Stanley ("Stanley") pled guilty on September 10, 2019, to one count of Drug Dealing, 16 *Del. C.* §4754(1), as a lesser included offense of Drug Dealing Tier 4, one count of Carrying a Concealed Deadly Weapon, 11 *Del. C.* § 1442, as a lesser included offense of Possession of a Firearm or Firearm Ammunition by a Person Prohibited ("PFBPP PABPP"); and one count of Possession of a Firearm or Firearm Ammunition by a Person Prohibited, 11 *Del. C.* §1448. He was also charged with one count of Possession of a Firearm During the Commission of a Felony, one count of Possession of a Deadly Weapon by a Person Prohibited, one count of Drug Dealing - Marijuana, one count of Aggravated

Possession of Marijuana, one count of Aggravated Possession of Cocaine and one count of Possession of Drug Paraphernalia[1]. As part of the plea deal the State agreed to enter *nolle prosequis* on the remaining charges and along with the defense recommended a sentence of thirty-one years incarceration, suspended after serving six years, followed by probation. The State also agreed to allow Stanley's sentencing to be deferred for over two months so that Stanley could make arrangements for his children's care and assist in an investigation into his young son's death. Had Stanley gone to trial and been found guilty as charged he faced many years in jail including several years of minimum mandatory. The Court agreed with the sentence recommendation of the parties and with the deferred sentencing. On November 27, 2019 the Court sentenced Stanley in accordance with the plea agreement recommendation.

Stanley did not appeal his conviction to the State Supreme Court Instead he filed the pending motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on August 26, 2020 in which he alleges ineffective assistance of counsel.

FACTS

According to the Affidavit of Probable Cause, on December 17, 2018 the Dover Police obtained a search warrant for Stanley and the residence of 309 William Street, Dover, Delaware. On December 19, 2019 the Dover Police set up surveillance at 309 William Street and at approximately 10:00 a.m. they observed Stanley arrive at the residence and enter it. Shortly thereafter Stanley exited the residence and was arrested. Stanley was searched and found to be in possession of 6.8 grams of cocaine and $576.00 in United States currency. Next the police searched the residence pursuant to the warrant and located 90 doses of oxycodone

[1] *State v. Stanley*, ID No. 1812010757, Re-indictment, D.I. 22.

in a Tier 4 quantity, 1,096 grams of marijuana in a Tier 1 quantity, vacuum sealed bags used to package illegal drugs for sale along with a digital scale and plastic bottles were also found. Lastly, a Ruger P95, 9 mm semi-automatic handgun loaded with ammunition was also found. Stanley was a person prohibited from carrying a firearm due to his criminal history.[2] The State in their response to Stanley's motion also noted that after being Mirandized, Stanley admitted to possessing the handgun and to dealing drugs in order to support his family.[3][4] Stanley's counsel filed a Motion to Suppress but the motion was withdrawn when Stanley agreed to accept the State's plea offer.

STANLEY'S CONTENTIONS

In his Motion for Postconviction Relief Stanley raises the following grounds for relief:

Ground one:	Stanley alleges his counsel was ineffective because he failed to request a competency hearing.
Ground two:	Stanley alleges his counsel was ineffective for failing to properly prepare for a suppression hearing and trial.
Ground three:	Stanley alleges his counsel coerced him into pleading guilty.

DISCUSSION

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

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[2] *State v. Stanley*, Del. Super., ID No. 1812010757, Affidavit of Probable Cause, D.I. 1.
[3] *Id.* State's Response, D.I. 39
[4] *State v. Stanley*, Del. Super. ID No. 1809003269 (July 30, 2019), tr. at 16-18.

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

None of Stanley's claims were raised previously at his plea, sentencing or on direct appeal. Consequently they are barred under Superior Court Criminal Rule 61(i)(3) unless he 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 claim that satisfies the pleading requirements of subparagraph (2)(i) or (2)(ii) of subdivision (d) of this rule.[8] To meet the requirements of Rule 61(d)(2) a defendant must plead with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted[9] or that he pleads with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States or Delaware Supreme courts, applies to the defendant's case rendering the conviction invalid.[10] Stanley's motion pleads neither requirement of Rule 61(d)(2).

Each of Stanley's grounds for relief are premised on allegations of ineffective assistance of counsel. Therefore Stanley has alleged sufficient cause for not having asserted these grounds for relief at trial and on direct appeal. Stanley's ineffective

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[5] *Bailey v. State*, 588 A.2d 1121, 1127 (Del.1991).
[6] Super. Ct. Crim. R. 61(i)(1).
[7] Super. Ct. Crim. R. 61(i)(3).
[8] Super. Ct. Crim. R. 61(i)(5).
[9] Super. Ct. Crim. R. 61(d)(2)(i).
[10] Super. Ct. Crim. R. 61(d)(2)(ii).

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 defendants, including Stanley, 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."[11] 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.[12]

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*[13] and adopted by the Delaware Supreme Court in *Albury v. State*.[14]

In the context of a guilty plea challenge, *Strickland* requires a defendant show: (1) that counsel's representation fell below an objective standard of reasonableness; and (2) that counsel's actions were prejudicial to him in that there is a reasonable probability that, but for counsel's error, he would not have pled guilty and would have insisted on going to trial and that the result of a trial would have been his

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[11] *State v. Gattis*, 1995 WL 790961 (Del. Super.).
[12] *Murray v. Carrier*, 477 U.S. 478, 488 (1986).
[13] 466 U.S. 668 (1984).
[14] 551 A.2d 53, 58 (Del. 1988).

acquittal.[15] The failure to establish that a defendant would not have pled guilty and would have proceeded to trial is sufficient cause for denial of relief.[16] In addition, Delaware courts have consistently held that in setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.[17] When examining the representation of counsel pursuant to the first prong of the *Strickland* test, there is a strong presumption that counsel's conduct was professionally reasonable.[18] This standard is highly demanding.[19] *Strickland* mandates that, when viewing counsel's representation, this Court must endeavor to "eliminate the distorting effects of hindsight."[20]

Following a complete review of the record in this matter, it is abundantly clear that Stanley has failed to allege any facts sufficient to substantiate his claims that his attorney was ineffective. I find trial counsel's affidavit, in conjunction with the record, more credible than Stanley's self-serving claims that his counsel's representation was ineffective. Stanley's counsel clearly denies the allegations.

Stanley was facing the possibility of many years in jail, including minimum mandatory time had he been convicted on all counts. The sentence and plea were very reasonable under all the circumstances, especially in light of the physical evidence against him. Prior to the entry of the plea, Stanley and his attorney discussed the case and the plea. The plea bargain was clearly advantageous to Stanley. Counsel was successful in negotiating a beneficial plea bargain with the

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[15] *Strickland*, 466 U.S. at 687.
[16] *Somerville v. State*, 703 A.2d 629, 631(Del. 1997) (citing *Albury v. State*, 551 A.2d 53, 60 (Del. 1988)) (citations omitted).
[17] *See e.g.*, *Outten v. State*, 720 A.2d 547, 557 (Del. 1998) (citing *Boughner v. State*, 1995 WL 466465 at *1 (Del. Supr.)).
[18] *Albury*, 551 A.2d at 59 (citing *Strickland*, 466 U.S. at 689).
[19] *Flamer v. State*, 585 A.2d 736, 754 (Del. 1990) (quoting *Kimmelman v. Morrison*, 477 U.S. 365, 383 (1986)).
[20] *Strickland*, 466 U.S. at 689.

State. Counsel's representation was certainly well within the range required by *Strickland*. Additionally, when Stanley entered his plea, he stated he was satisfied with defense counsel's performance. He is bound by his statement unless he presents clear and convincing evidence to the contrary.[21] Consequently, Stanley has failed to establish that his counsel's representation was ineffective under the *Strickland* test.

Even assuming, *arguendo*, that counsel's representation of Stanley was somehow deficient, Stanley must satisfy the second prong of the *Strickland* test, prejudice. In setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk dismissal.[22] In an attempt to show prejudice, Stanley simply asserts that his counsel was ineffective by failing to adequately investigate the case and for allegedly coercing him into pleading. Stanley's Trial Counsel clearly denied coercing him or being unprepared. My review of the facts of the case leads me to conclude that counsel's representation of Stanley was well within the requirements of the Sixth Amendment and no prejudice has been demonstrated. His statements are insufficient to establish prejudice, particularly in light of the evidence against him. Therefore, I find Stanley's grounds for relief are meritless.

To the extent that Stanley alleges his plea was involuntary, the record contradicts such an allegation. When addressing the question of whether a plea was constitutionally knowing and voluntary, the Court looks to a plea colloquy to determine if the waiver of constitutional rights was knowing and voluntary.[23] At the guilty-plea hearing, the Court asked Stanley whether he understood the nature of the charges, the consequences of his pleading, and whether he was voluntarily entering

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[21] *Mapp v. State*, 1994 WL 91264, at *2 (Del. Supr.) (citing *Sullivan v. State*, 636 A.2d 931, 937-938 (Del. 1994)).

[22] *Larson v. State*, 1995 WL 389718, at *2 (Del. Supr.) (citing *Younger v. State*, 580 A.2d 552, 556 (Del. 1990)).

[23] *Godinez v. Moran*, 509 U.S. 389, 400 (1993).

the plea. The Court asked Stanley if he understood he would waive his constitutional rights if he entered the plea including the right to suppress evidence; if he understood each of the constitutional rights listed on the Truth-in-Sentencing Guilty Plea Form ("Guilty Plea Form"); and whether he gave truthful answers to all the questions on the form. The Court asked Stanley if he had discussed his plea and its consequences fully with his attorney. The Court asked Stanley if he had discussed the plea and its consequences fully with his attorney. The Court also asked Stanley if he was satisfied with this counsel's representation. Stanley answered each of these questions affirmatively.[24] I find counsel's representations far more credible than Stanley's self-serving, vague allegations.

Furthermore, prior to entering his plea, Stanley signed a Guilty Plea Form and Plea Agreement in his own handwriting. Stanley's signatures on the forms indicate that he understood the constitutional rights he was relinquishing by pleading guilty and that he freely and voluntarily decided to plead guilty to the charges listed in the Plea Agreement. Stanley is bound by the statements he made on the signed Guilty Plea Form, unless he proves otherwise by clear and convincing evidence.[25] I confidently find that Stanley entered his plea knowingly and voluntarily and that Stanley's grounds for relief are completely meritless.

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[24] *State v. Stanley*, Del. Super., I.D. No. 1812010757 (Sept. 10, 2020) Tr. at 9-15.
[25] *Sommerville v. State*, 703 A.2d 629, 632 (Del. 1997).

CONCLUSION

I find that Stanley's counsel represented him in a competent and effective manner as required by the standards set in *Strickland* and that Stanley has failed to demonstrate any prejudice stemming from the representation. I also find that Stanley's guilty plea was entered knowingly and voluntarily. I recommend that the Court ***deny*** Stanley's motion for postconviction relief as procedurally barred and meritless.

/s/ Andrea M. Freud
Commissioner

AMF/dsc