

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 Plaintiff,)
)
 v.) Cr. ID Nos.:
) 2108015636, 2104007221,
) 2011001739, and 2109015080
 MICHAEL SULLIVAN-WILSON,)
) VOPs: 1904017306 and 1904018599
 Defendant.)

Submitted: September 13, 2023

Decided: November 15, 2023

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE DENIED**

Daniel B. McBride, Deputy Attorney General, Department of Justice, Wilmington,
Delaware, Attorney for the State.

Michael Sullivan-Wilson, SBI # 00788843, H.R.Y.C.I., P.O. Box 9561,
Wilmington, Delaware, *pro se*.

PARKER, Commissioner

This 15th day of November 2023, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND, FACTS AND PROCEDURAL HISTORY

1. Four cases and two violations of probation were all resolved as part of the global plea offer that Defendant Michael Sullivan-Wilson accepted on June 22, 2022. The four pending cases were at varying stages of prosecution at the time the plea agreement was entered into.¹

2. In Criminal Action No. 2011001739, Sullivan-Wilson was indicted on August 2, 2021. Sullivan-Wilson was charged with Disregarding a Police Officers Signal, Vehicular Assault Second Degree, Leaving the Scene of an Accident, Reckless Driving, and additional Title 21 motor vehicle violations. These charges stemmed from an incident during which Sullivan-Wilson fled from police officers while driving his girlfriend's car. When fleeing from the police, Sullivan-Wilson ran a red light and struck and injured another driver. Police officers saw Sullivan-Wilson behind the wheel of the vehicle before he fled. Sullivan-Wilson's girlfriend confirmed that he was driving the car that afternoon.

3. In Criminal Action No. 2104007221, Sullivan-Wilson was indicted on August 16, 2021. Sullivan-Wilson was charged with Drug Dealing Heroin, Possession of a Firearm During the Commission of a Felony, Possession of a Firearm by a Person

¹ June 22, 2022 Plea Transcript, at pgs. 3-9.

Prohibited (prior violent felony within 10 years), and Possession of Cocaine. These charges were the result of an investigation conducted by the New Castle County Police Department. The investigation came to a head on April 13, 2021, when the police went to execute a search warrant at Sullivan-Wilson's apartment. The police observed Sullivan-Wilson leave the apartment complex and get into the front passenger seat of a Jeep Grand Cherokee driven by Elizabeth Ervin. When Ervin stopped the Jeep at a local Wawa, police officers took Sullivan-Wilson into custody. When taken into custody, Sullivan-Wilson had \$392 and 38 bags of heroin stamped "Lyft" on him. The police also located a .45 caliber handgun on the front passenger floorboard and 8 bags of marijuana above the glove box of the Jeep. A subsequent search of Sullivan-Wilson's apartment revealed 38 more bags of heroin with the same "Lyft" stamp and approximately .56 grams of crack cocaine. The heroin and cocaine were found in a jacket pocket along with a credit card bearing Sullivan-Wilson's name.

4. Criminal Action Nos. 2108015636 and 2109015080 were factually related and had not yet been indicted at the time the global plea agreement was entered. In order to resolve these cases as part of the global plea, an Information was filed charging Sullivan-Wilson with a single count of Possession of a Firearm by a Person Prohibited. Had these matters not been resolved as part of the global plea, and these matters proceeded to indictment, Sullivan-Wilson would have faced far more serious charges. He would likely have been charged with Assault First Degree, Possession

of a Firearm During the Commission of a Felony, Carrying a Concealed Deadly Weapon, Possession of Heroin and Cocaine, as well as Possession of a Firearm by a Person Prohibited. These matters stemmed from a shooting on August 29, 2021, in which a female was shot in the leg in the City of Wilmington. Police officers recovered six spent .45 caliber shell casings from the scene. Surveillance video captured the shooting and from the surveillance video the police officers were able to identify Sullivan-Wilson as the shooter. On the day of the shooting, Sullivan-Wilson was taken into custody and the police found a .45 caliber handgun in his waistband, and 55 bags of heroin and approximately 1.38 grams of crack cocaine in his pocket.

5. Sullivan-Wilson was also facing violations of probation from his convictions in Criminal Action No. 19040170306 for aggravated menacing and in Criminal Action No. 1904018599 for carrying a concealed deadly weapon as a result of these new arrests.

6. If Sullivan-Wilson had not resolved all of his outstanding charges in a global plea, if convicted at trial, he was facing:

1) as to Criminal Action No. 2104007221, a prison term of at least 8 years minimum-mandatory up to 48 ½ years.

2) as to Criminal Action No. 2011001739, a prison term of up to approximately 5 years.

3) as to Criminal Action Nos. 2108015636 and 2109015080, had Defendant not accepted responsibility early, and had these cases been indicted, Defendant would likely be facing a prison term of at least 10 years minimum-mandatory up to 74 years.

4) as to Criminal Actions Nos. 19040170306 and 1904018599, Sullivan-Wilson was facing back time on both these violations of probation.

7. Consequently, had Sullivan-Wilson not pled guilty, and insisted on going to trial, he would likely be facing prison time of a total of at least 18 years minimum-mandatory up to more than 125 years of incarceration.

8. On June 22, 2022, Sullivan-Wilson pled guilty to two charges. He pled guilty to one count of Possession of a Deadly Weapon during the Commission of a Felony (“PDWDCF”) (a lesser included offense to Possession of a Firearm during the Commission of a Felony) in Criminal Action No. 2104007221, and to one count of Possession of a Firearm by a Person Prohibited (“PFBPP”) (by Information in Criminal Action Nos. 2108015636 and 2109015080). The PDWDCF carried a 2 year minimum-mandatory sentence and the PFBPP carried a 5-year minimum-mandatory sentence. The State agreed to recommend the 7 year minimum-mandatory sentence.

9. The plea agreement also resolved Sullivan-Wilson’s violations of probation (“VOP”) in the two pending VOP cases. The State agreed to recommend a sentence

of three months at Level V for each of the two cases, for a total of six months of Level V on the VOPs.

10. In total, the State's sentence recommendation for a global plea as to all outstanding charges and VOPs was for a total of 7 ½ years of unsuspended prison time, followed by probation.

11. On June 22, 2022, on the global plea, Sullivan-Wilson was sentenced to a total of 7 ½ years unsuspended prison time, followed by 12 months of Level III probation.

12. As to Criminal Action No. 2104007221, the case wherein Sullivan-Wilson was arrested on April 13, 2021 in which he was a passenger in the vehicle driven by Elizabeth Ervin, a Rapid DNA test result came back on April 27, 2021, that the marijuana packaging of the marijuana found in the glove box of the Jeep had Elizabeth Ervin's fingerprints on it.² As to the .45 caliber handgun found on the front passenger floorboard, a DNA report dated August 8, 2021, revealed that Sullivan-Wilson had touched the slide and barrel of the firearm. In fact, the statistical significance of Sullivan-Wilson's DNA on the slide and barrel of the firearm was astronomical.³ As previously noted, also at the time of this arrest, Sullivan-Wilson was found to be in personal possession of \$392 and 38 bags of heroin. In addition, the search of Sullivan-Wilson's apartment relating to this arrest

² As to Criminal Action No. 2108015636, D.I. 9, Exhibit A to Defendant's Rule 61 Motion.

³ As to Criminal Action No. 2108015636, D.I. 15, Exhibit B- page 2, to State's Response to Defendant's Rule 61 Motion.

revealed an additional 38 bags of heroin and .56 grams of crack cocaine in Sullivan-Wilson's jacket pocket.

13. As to Criminal Action Nos. 2108015636 and 2109015080, the cases involving the shooting of a female on August 29, 2021, the Delaware State Police Forensics Firearms unit compared the six spent shell casings found at the scene of the shooting to the .45 caliber handgun recovered from Sullivan-Wilson's waistband the day of the shooting. The examination found the casings were fired from the .45 caliber handgun found in Sullivan-Wilson's possession.⁴

14. Sullivan-Wilson did not file a direct appeal.

SULLIVAN-WILSON'S RULE 61 MOTION

15. Sullivan-Wilson filed the subject Rule 61 motion on September 16, 2022. In the subject motion, Sullivan-Wilson raises three ineffective assistance of counsel claims for relief. First, he claims that his counsel was ineffective for insisting that Defendant accept the guilty plea offer. Second, he claims his counsel was ineffective for failing to file a motion to suppress. Third, he claims his counsel was ineffective for failing to provide him with items disclosed to defense counsel by the State, including DNA samples.

⁴ As to Criminal Action No. 2108015636, D.I. 15, Exhibit C to State's Response to Defendant's Rule 61 Motion.

16. In this Rule 61 motion, the record was enlarged and Sullivan-Wilson's trial counsel was directed to submit an Affidavit responding to his ineffective assistance of counsel claims. Thereafter, the State filed a response to the motion and Sullivan-Wilson was permitted to file a reply thereto.⁵

17. In order to prevail on an ineffective assistance of counsel claim, the defendant must meet the two-pronged *Strickland* test by showing that: (1) counsel performed at a level "below an objective standard of reasonableness" and that, (2) the deficient performance prejudiced the defense.⁶ The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires him to show that there is a reasonable probability that, but for defense counsel's unprofessional errors, the outcome of the proceedings would have been different.⁷

18. In the context of a plea challenge, it is not sufficient for the defendant to simply claim that his counsel was deficient. The defendant must also establish that counsel's actions were so prejudicial that there was a reasonable probability that, but for counsel's deficiencies, the defendant would not have taken a plea but would have insisted on going to trial.⁸ The burden of proving ineffective assistance of

⁵ Super.Ct.Crim.R. 61(f) and 61(g).

⁶ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

⁷ *Id.* at 687-88, 694.

⁸ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997); *Premo v. Moore*, 131 S.Ct. 733, 739-744 (2011).

counsel is on the defendant.⁹ Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.¹⁰

19. The United States Supreme Court has reiterated the high bar that must be surmounted to prevail on an ineffective assistance of counsel claim.¹¹ The United States Supreme Court cautioned that in reviewing ineffective assistance of counsel claims in the context of a plea bargain, the court must be mindful of the fact that “[p]lea bargains are the result of complex negotiations suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks.”¹²

20. With this backdrop in mind, we turn now to Sullivan-Wilson’s specific claims.

Claim One: Counsel’s Insistence that Defendant Accept the Plea

21. In Claim One, Sullivan-Wilson claims that his counsel was ineffective because counsel insisted that Defendant take the plea.

22. First, a defendant is bound by his answers on the guilty plea form and by his testimony at the plea colloquy in the absence of clear and convincing evidence to the contrary.¹³

⁹ *Oliver v. State*, 2001 WL 1751246 (Del.).

¹⁰ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

¹¹ *Premo v. Moore*, 131 S.Ct. 733, 739-744 (2011).

¹² *Id.*, at pg. 741.

¹³ *State v. Harden*, 1998 WL 735879, *5 (Del. Super.); *State v. Stuart*, 2008 WL 4868658, *3 (Del. Super. 2008).

23. In the subject action, the Plea Agreement and plea colloquy establish that Sullivan-Wilson entered into his guilty plea intelligently, knowingly and voluntarily.¹⁴

24. In fact, at the plea colloquy, Sullivan-Wilson was specifically asked by the Court: “Have you freely and voluntarily decided to plead guilty to the charges listed in your written plea agreement?” To which Sullivan-Wilson responded: “Yes.”¹⁵

25. Sullivan-Wilson further represented that nobody was forcing or threatening him into entering this plea.¹⁶ He confirmed that he was freely and voluntarily entering into his plea, and that he was not being threatened or forced to do so by his lawyer, the State, or anyone else.¹⁷

26. Sullivan-Wilson also represented that he was satisfied with his counsel’s representation of him and that he was fully advised of his rights.¹⁸

27. Sullivan-Wilson represented to the Court that all of his answers were truthful.¹⁹

28. In his Rule 61 motion, Sullivan-Wilson now claims that while he represented to the Court during his plea colloquy that he was satisfied with his counsel’s representation, and that he was being truthful, he was not.²⁰ Despite his present

¹⁴ Plea Agreement dated June 21, 2022; June 22, 2022 Plea Transcript, at pgs. 12-14, 20.

¹⁵ June 22, 2022 Plea Transcript, at pg. 12.

¹⁶ June 22, 2022 Plea Transcript, at pg. 12.

¹⁷ June 22, 2022 Plea Transcript, at pg. 12.

¹⁸ June 22, 2022 Plea Transcript, at pg. 15.

¹⁹ June 22, 2022 Plea Transcript, at pg. 15.

²⁰ As to Criminal Action No. 2108015636, D.I. 13, Defendant’s letter dated March 9, 2023.

contention to the contrary, a defendant's statements to the Superior Court during the guilty plea colloquy are presumed to be truthful.²¹ Sullivan-Wilson is bound by his answers on his guilty plea form and at his plea colloquy. The record unequivocally established that Sullivan-Wilson entered into his plea freely and voluntarily and was not bullied or coerced to do so by his counsel, by the State, or by anyone else. The record also unequivocally established that Sullivan-Wilson was satisfied with his counsel's representation and that he was fully advised of his rights prior to entering into the plea.

29. Moreover, it should be emphasized that defense counsel encouraging Sullivan-Wilson to take a global plea wrapping up all the outstanding charges and violations of probation, rather than wait for the State to continue its investigation and to allow the evidence against him to continue to mount, was sound advice by defense counsel and was not deficient or ineffective in any respect. Had the shooting cases, which were resolved by the plea pre-indictment not been resolved, and the cases proceeded to indictment, Sullivan-Wilson would be facing far more serious charges.

30. Defense counsel recognizing the strength of the State's evidence against Sullivan-Wilson, and that the evidence would just continue to mount, and urging Sullivan-Wilson to accept the global plea offer was exactly the counseling that

²¹ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

defense counsel should have been doing. Sullivan-Wilson could have been facing substantially more prison time including substantially more minimum-mandatory time had he not accepted the plea and elected instead to proceed to trial.

31. Defense counsel effectively counseled Sullivan-Wilson and assisted him in making a prudent decision based on the pending plea offer, the evidence against him, the possible charges he was facing if he did not accept the global plea, and the possible sentences he would be facing if convicted at trial of all the charges he could be facing.

32. The record reflects that the Court conducted a thorough plea colloquy to determine that Sullivan-Wilson's decision to plead guilty was knowing, intelligent and voluntary. The record unequivocally established that Sullivan-Wilson entered into his plea voluntarily and that he was not operating under any misapprehension or mistake as to his legal rights.

33. The representations made by Sullivan-Wilson during the plea colloquy are presumed to be truthful in the absence of clear and convincing evidence to the contrary. The record is devoid of any evidence to support Sullivan-Wilson's present contention that his plea was not knowingly, intelligently and voluntarily entered.

34. Sullivan-Wilson's claim that trial counsel was somehow ineffective in urging him to accept the plea is without merit. Trial counsel was not deficient in any respect. This claim is without merit.

Claim Two: Ineffective Assistance for Not Filing Motion to Suppress

35. In Claim Two, Sullivan-Wilson claims that his counsel was ineffective for failing to file a motion to suppress.

36. First, in his Affidavit in response to Sullivan-Wilson's Rule 61 motion, trial counsel points out how difficult it is to respond to this claim without any further details when this global plea involved four cases and two VOPs. The cases were all in various stages of prosecution. In fact, two of the cases were in the infancy stage, and had not even been indicted, let alone been anywhere near ripe for suppression motions.²²

37. Second, Sullivan-Wilson waived this claim at the time he accepted the plea.

36. Sullivan-Wilson's valid guilty plea waived his right to challenge any alleged errors, deficiencies or defects occurring prior to the entry of his plea, even those of constitutional proportions.²³ Sullivan-Wilson's valid guilty plea waived any right to test the strength of the State's evidence, the right to hear and question witnesses, the right to present evidence in his own defense, and the right to appeal, if convicted.

38. Sullivan-Wilson could have rejected the global plea deal and elected to proceed to trial on all charges presently pending, and all the additional charges that would have been brought against him if the unindicted cases had not resolved and

²² As to Criminal Action No. 2108015636, D.I. 12, Trial Counsel's Affidavit in Response to Defendant's Rule 61 motion, pgs. 2-3.

²³ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Modjica v. State*, 2009 WL 2426675 (Del. 2009); *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2004).

preceded to indictment. If he proceeded to trial on all of the cases, he would have preserved any defenses, including any suppression motions, that may have existed but he would have been exposed to substantially more prison time if convicted. Instead, he chose to waive those trial rights and accept the plea offer.

39. Sullivan-Wilson waived any suppression issue that may have existed, to the extent any such issue in any one of the cases existed, when he entered into his global plea.²⁴

40. Sullivan-Wilson's plea represented a prudent choice given the pending charges, the evidence against him, the evidence that was continuing to mount, and the possible sentences he was facing if convicted at trial.

41. Sullivan-Wilson has failed to make any concrete allegation of deficient conduct, let alone, deficient conduct that resulted in actual prejudice. Sullivan-Wilson's unsubstantiated ineffective assistance of counsel is without merit.

Claim Three: Ineffective Assistance for Withholding Evidence

42. Finally, Sullivan-Wilson claims that his counsel was ineffective for failing to provide him with certain evidence, including DNA samples and evidence, in counsel's possession.

43. During the plea colloquy, Sullivan-Wilson represented to the Court that he had discussed the plea offer with his counsel, that he was fully advised of his rights,

²⁴ See, *Mills v. State*, 2016 WL 97494, at *3 (Del.).

and that he did not want to discuss anything further with his counsel prior to taking the plea.²⁵

44. In response to Sullivan-Wilson's Rule 61 claim, trial counsel affirmed that all potential evidence and defenses were explored and discussed with Defendant. Trial counsel advises that he did not withhold any evidence from Defendant. Everything trial counsel had was explained to Sullivan-Wilson, as well as any allegations of the evidence the State said it had.²⁶

45. Trial counsel affirmed that he went over the evidence that the State alleged it had in each of the four cases as well as the evidence and reports that were sent to defense counsel at the time of the plea. The four cases were all at different stages of prosecution at the time of the plea, so defense counsel was not certain what reports he had at the time of the plea, but he went over everything he had and everything the State said was coming.²⁷

46. Trial counsel noted that he was able to negotiate such a favorable sentence and plea due to the fact, in part, that Sullivan-Wilson was agreeing to accept responsibility at an early stage of some of the proceedings before all the cases were fully developed. Trial counsel represented that he made certain that before Sullivan-Wilson accepted the plea that he had enough information on each case to determine

²⁵ June 22, 2022 Plea Transcript, at pgs. 11, 15.

²⁶ As to Criminal Action No. 2108015636, D.I. 12, Trial Counsel's Affidavit in Response to Defendant's Rule 61 motion, pgs. 3-4.

²⁷ *Id.*

that the plea was justified, that defense counsel had explained the nature of the charges, and that defense counsel had discussed the evidence alleged in each case.²⁸

47. As previously noted, the DNA reports pertaining to Criminal Action No. 2104007221, revealed that the marijuana found in the glove box of Defendant's girlfriend's vehicle had Defendant's girlfriend's fingerprints on it. The DNA report on the gun found on the front passenger floorboard revealed that Sullivan-Wilson had personally touched the slide and barrel of the gun and the statistical significance of his DNA found on the slide and barrel of the gun was astronomical.

48. As to Criminal Action Nos. 2108015636 and 2109015080, the Delaware State Police Forensics Firearms Unit report determined that the shots fired at the shooting scene came from Sullivan-Wilson's gun.

49. Irrespective of whether the reports were explained to Sullivan-Wilson or shown to him, the conclusion is inevitable that it was in Sullivan-Wilson's best interest to accept an early plea because the evidence against him was continuing to mount as the State's investigation continued.

50. It is hard to envision how trial counsel's representation of Sullivan-Wilson could be deemed deficient in any respect given the ultimate result achieved in light of the facts and circumstances presented herein. Sullivan-Wilson has failed to make any concrete allegation of deficient conduct, let alone, deficient conduct that resulted

²⁸ *Id.*

in actual prejudice. Sullivan-Wilson's ineffective assistance of counsel claims are without merit.

For all of the foregoing reasons, Sullivan-Wilson's Motion for Postconviction Relief should be **DENIED**.

IT IS SO RECOMMENDED.

/s/ Lynne M. Parker
Commissioner Lynne M. Parker

cc: Prothonotary
Darryl Rago, Esquire