

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

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|--------------------|---|------------------------|
| STATE OF DELAWARE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Cr. ID Nos. 2104016594 |
| |) | 2105005913 |
| RAYMOND J. ANGELL, |) | 2105005988 |
| |) | 1606018924 |
| |) | |
| Defendant. |) | |

Submitted: October 14, 2024
Decided: November 6, 2024

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

Jeffrey M. Rigby, Deputy Attorney General, Department of Justice, Wilmington,
Delaware, Attorney for the State.

Raymond J. Angell, Howard R. Young Correctional Institution, Wilmington,
Delaware, *pro se*.

PARKER, Commissioner

This 6th day of November 2024, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND, FACTS AND PROCEDURAL HISTORY

1. Three cases were resolved as part of the global plea offer that Defendant Raymond J. Angell accepted on April 25, 2022.

2. In Criminal Action No. 2104016594, Angell was indicted on the charges of Possession of a Firearm by a Person Prohibited ("PFBPP") and Receiving a Stolen Firearm (the firearm was reported stolen out of New Mexico). These charges stemmed from an incident on April 29, 2021, when Angell's neighbor turned a handgun, a Smith and Wesson 38 Revolver, into the police which the neighbor said Angell had hidden in his backyard. The neighbor told the police that Angell had hidden the gun because Angell believed the police were in the area trying to take him into custody for his outstanding warrants.¹ Angell did have warrants outstanding stemming from probation violations.²

3. In Criminal Action Nos. 2105005913 and 2105005988, Angell was indicted on the charges of drug dealing, resisting arrest, terroristic threatening, and Possession of Ammunition by a Person Prohibited. These charges stemmed from an incident on May 12, 2021.

¹ See as to Criminal Action No. 2104016594, D.I. 1- Affidavit of Probable Cause attached as Exhibit B to Justice of Peace Court No. 11 Commitment filed in the Superior Court June 15, 2021.

² *Id.*

4. On April 25, 2022, Angell pled guilty in Criminal Action No. 2104016594 to the charge of PFBPP. The remaining charges in all three pending cases were dismissed as part of the plea. The parties agreed to immediate sentencing, and further agreed that both parties would jointly recommend a 15-year Level V sentence, suspended after the mandatory 5-year prison term, followed by 18 months of Level III probation.

5. Following the plea colloquy on April 25, 2022, the Superior Court proceeded to sentencing in accordance with the parties' request, and sentenced Angell to the parties' jointly recommended sentence.

6. Angell did not file a direct appeal.

7. At the time of the arrests and plea, Angell was also on probation in Criminal Action No. 1606018924 stemming from convictions on January 17, 2017 for Possession of a Firearm During the Commission of a Felony and Terroristic Threatening.

8. On May 24, 2022, Angell was found in violation of that probation, in part due to his conviction entered on April 25, 2022, and was sentenced to one year at Level V, suspended after 120 days, with no probation to follow.

ANGELL'S RULE 61 MOTION

9. Angell filed the subject Rule 61 motion for post-conviction relief on February 22, 2024. In the subject motion, Angell raises two claims: (1) that he was actually innocent of the charges and that he was pressured into pleading guilty; and (2) that

his counsel was ineffective in failing to file a motion to suppress the firearm and fully investigate his defense to establish his innocence.

10. In this Rule 61 motion, the record was enlarged and Angell'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 Angell was permitted to file a reply thereto.³

11. For the reasons discussed below, Angell's subject Rule 61 motion should be denied on the grounds that: 1) the motion was untimely filed; 2) the claims raised herein were waived at the time Angell entered into his plea, and 3) the claims are without merit.

ANGELL'S RULE 61 MOTION IS UNTIMELY

12. Before examining the merits of a motion for postconviction relief, the court must first apply the rules governing the procedural requirements for relief set forth in Rule 61.⁴

13. A motion for postconviction relief may not be filed more than one year after the judgment of conviction is final.⁵ For those cases, like the subject case, in which the defendant does not file a direct appeal, a judgment of conviction is final 30 days after the Superior Court imposed sentence.⁶

³ Super.Ct.Crim.R. 61(f) and 61(g).

⁴ *Smith v. State*, 2024 WL 4602147, *2 (Del.).

⁵ Super.Ct.Crim.R. 61(i)(1).

⁶ Super.Ct.Crim.R. 61(m)(1).

14. Angell was sentenced on April 25, 2022. He did not file a direct appeal. Therefore, his judgment of conviction became final on or about May 26, 2022. Angell filed the pending Rule 61 motion on February 24, 2024, well-over the one-year time period for the timely filing of this motion.

15. In this Rule 61 motion, Angell raises claims that were known to him at the time of his plea. Angell does not allege the existence of any new facts, or anything recently discovered, that may warrant a closer look at the time-bar. His allegations stem from alleged shortcomings of counsel prior to his entering into his plea. There was no just reason for Angell's delay in the timely filing of his Rule 61 motion.

16. For the sake of completeness, it is noted that because Angell's conviction stemmed from a guilty plea, Angell would not have been able to avail himself of any exception to the one-year time bar even if he had (which he did not) alleged the existence of anything new or recently discovered.⁷

17. Angell's Rule 61 motion filed after the one-year time period permitted for the filing of such claims, is at this late date, untimely and procedurally barred.

ANGELL WAIVED HIS CLAIMS UPON ENTRY OF HIS PLEA

18. 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

⁷ Super.Ct.Crim.R. 61(d)(2), (i)(5); *Cadiz v. State*, 2022 WL 3366253, *1 (Del.); *Brice v. State*, 2024 WL 3710504, *1 (Del.).

contrary.⁸ In the subject action, the Truth-in-Sentencing Guilty Plea Form, Plea Agreement and plea colloquy reveal that Angell knowingly, voluntarily and intelligently entered into his guilty plea to the charge of PFBPP.

19. At the plea hearing, Angell represented that he freely and voluntarily decided to plead guilty to the charge of PFBPP and that nobody forced or threatened him to enter into the plea.⁹

20. Angell represented that he was satisfied with his counsel's representation, that his counsel fully advised him of his rights, and that he understood the consequences of entering into his guilty plea.¹⁰ Angell represented that he understood he was waiving, among other rights, his rights to be presumed innocent, to challenge the charges against him, to hear and question the witnesses against him, and to present evidence in his defense.¹¹

21. The Court accepted Angell's guilty plea only after finding that he entered into his plea knowingly, intelligently and voluntarily.¹²

22. As confirmed by the plea colloquy, Plea Agreement and Truth-in-Sentencing Guilty Plea Form, Angell entered his plea knowingly, intelligently and voluntarily.

⁸ *State v. Harden*, 1998 WL 735879, *5 (Del. Super.); *State v. Stuart*, 2008 WL 4868658, *3 (Del. Super. 2008).

⁹ April 25, 2022 Plea Transcript, at pgs. 5; Plea Agreement dated April 25, 2022.

¹⁰ April 25, 2022 Plea Transcript, at pgs. 5-7; Truth-in-Sentencing Guilty Plea Form dated April 25, 2022.

¹¹ April 25, 2022 Plea Transcript, at pgs. 5-6; Plea Agreement dated April 25, 2022; Truth-in-Sentencing Guilty Plea Form dated April 25, 2022.

¹² April 25, 2022 Plea Transcript, at pgs. 9-10.

Angell has not presented any clear, contrary evidence to call into question his testimony at the plea colloquy, Plea Agreement or answers on the Truth-in-Sentencing Guilty Plea Form.

23. Angell'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.¹³ Angell'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.

24. Angell's claims presented herein stem from allegations of defects, errors, misconduct and deficiencies which existed prior to the entry of the plea. Angell's claims that he was not guilty of the charges, that his counsel was ineffective for failing to establish his innocence and for failing to file a suppression motion were all waived when Angell voluntarily entered into his guilty plea. Angell's claims presented herein were waived when he knowingly, freely and intelligently entered his plea.¹⁴

ANGELL'S CLAIMS ARE WITHOUT MERIT

25. In addition to Angell's claims being untimely and waived, the claims raised herein are also without merit.

¹³ *Smith v. State*, 2024 WL 4602147, *3 (Del.); *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).

¹⁴ See, *Smith v. State*, 2024 WL 4602147, *3 (Del.); *Mills v. State*, 2016 WL 97494, at *3 (Del.).

26. Essentially, Angell claims that the firearm was not his, that he was pressured into accepting the plea, and that his counsel was ineffective for failing to investigate and establish his innocence. Angell also claims that his counsel was ineffective for not filing a suppression motion.

27. 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.¹⁵ 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.¹⁶

28. 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.¹⁷ The burden of proving ineffective assistance of counsel is on the defendant.¹⁸ Mere allegations of ineffectiveness will not suffice;

¹⁵ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

¹⁶ *Id.* at 687-88, 694.

¹⁷ *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).

¹⁸ *Oliver v. State*, 2001 WL 1751246 (Del.).

instead, a defendant must make and substantiate concrete allegations of actual prejudice.¹⁹

29. The United States Supreme Court has reiterated the high bar that must be surmounted to prevail on an ineffective assistance of counsel claim.²⁰ 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.”²¹

30. Turning to the subject matter, Angell’s present claims of attorney ineffectiveness are belied by the record. A defendant’s statements to the Superior Court during the guilty plea colloquy are presumed to be truthful.²²

31. Angell expressly represented to the Court at the time of the plea that he freely and voluntarily decided to plead guilty to the charge of PFPBB, that he was not forced or threatened to enter into his plea by his lawyer, that he was satisfied with his lawyer’s representation, and that he understood that by entering into his plea, he was waiving his right to claim that he was innocent of the charges.²³

¹⁹ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

²⁰ *Premo v. Moore*, 131 S.Ct. 733, 739-744 (2011).

²¹ *Id.*, at pg. 741.

²² *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

²³ April 25, 2022 Plea Transcript, at pgs. 5—8.

32. It is important to emphasize that Angell was facing seven charges, four of which were felony charges, stemming from three cases and two unrelated incidents. If Angell did not accept the global plea to the one charge of PFBPP, he was facing three additional felony charges, and was exposed to significantly more prison time if convicted at trial.

33. Angell understood that by accepting the plea, he was waiving his right to test the State's case and raise defenses to the charge of PFBPP. He could have elected to proceed to trial on all the pending charges thereby preserving the right to test the State's case and preserving the right to raise any defenses that may have existed, but he would then have been exposed to substantially more prison time if convicted. Instead, he chose to waive those rights, and accept the plea offer by pleading guilty to only one of the seven pending charges.

34. Angell's plea represented a prudent choice given the pending charges, the evidence against him, and the possible sentences he was facing if convicted at trial.

35. Angell's defense counsel, in his Affidavit in response to Angell's Rule 61 motion, advises that he retained the services of a detective agency to assist in the investigation of the cases, review the evidence, interview the defendant, interview witnesses and explore the potential defense of actual innocence. Angell was provided with a status update of the defense investigation on April 22, 2022. The investigation remained ongoing. On April 25, 2022, Angell accepted the global plea

offer thereby resolving all three pending cases and, as a result thereof, the ongoing investigation to develop his potential actual innocence defense was discontinued.²⁴

36. As to Angell's contention that his counsel was ineffective for failing to file a suppression motion of the firearm, Angell does not seem to understand that if it was his position that the firearm did not belong to him, then he would not have had standing to contest the search and seizure of the firearm. If he had no relationship to the firearm, he would not have any legitimate expectation of privacy as to that firearm.²⁵

37. Moreover, Angell could have rejected the global plea deal and elected to proceed to trial on all the pending charges, and if he proceeded to trial, he would have preserved any defenses, including any suppression motions, that may have existed. However, if he elected to proceed to trial and reject the plea deal, he would have been exposed to substantially more prison time if convicted.

38. Angell waived any suppression issue that may have existed, to the extent any such issue existed in any one of the cases, when he entered into his global plea.²⁶

²⁴ As to Criminal Action No. 2104016594, D.I. 17- Affidavit of Trial Counsel, at pg. 1-2.

²⁵ See, *State v. Goldsborough*, 2022 WL 3695054, *2-3 (Del.Super.)(a person has standing to contest the legality of a search and seizure only if he can assert either a property or a possessory interest in the property seized and if he can show a legitimate expectation of privacy in the area searched).

²⁶ See, *Mills v. State*, 2016 WL 97494, *3 (Del.).

39. Angell has not established that his counsel was deficient in any respect or that he has suffered any actual prejudice therefrom. His ineffective assistance of counsel claims must fail.

CONCLUSION

40. Angell's Rule 61 motion should be denied because it was untimely filed, the claims raised herein were waived at the time of the plea, and the claims raised are without merit.

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

IT IS SO RECOMMENDED.

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

cc: Prothonotary
Peter W. Veith, Esquire
Raymond D. Armstrong, Esquire