

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 v.)
)
 NICHOLAS JENSEN,) ID No. 2309007111
)
 Defendant.)
)
)

Date Submitted: January 20, 2026
Date Decided: April 21, 2026

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

ORDER

Having considered Defendant Nicholas Jensen’s Motion for Postconviction Relief, Trial Counsel’s Affidavit Response and Opposition to Defendant’s Motion for Postconviction Relief, and the State’s Response in Opposition, it appears to the Court that:

1. In August 2023, the Newark Police Department (“NPD”) began an investigation following a report that Mr. Jensen sexually assaulted his stepdaughter by laying in bed with her and attempting to insert his penis into her anus. Mr. Jensen was arrested and charged with one count rape first degree, one count unlawful sexual contact first degree, one count sexual abuse of a child by a person in a position of trust first degree, and one count dangerous crime against a child. On February 26, 2024, Mr. Jensen was indicted by a grand jury on the charges.

2. In the proceedings leading to his sentencing, Mr. Jensen was represented by Mr. Marc J. Wienkowitz, Esquire (“Trial Counsel”). On October 14, 2024, Mr. Jensen agreed to a *Robinson* plea as Mr. Jensen was addicted to opiates at the time of the crime, pleading guilty to one count second degree rape. This Court sentenced Mr. Jensen to 25 years Level V incarceration suspended after 15 years for five years at Level III on May 16, 2025. Mr. Jensen did not file a direct appeal of his conviction.

3. Mr. Jensen filed a timely pro se Motion for Postconviction Relief on August 8, 2025. Mr. Jensen’s motion raises three claims: (1) ineffective assistance of counsel, (2) “Didn’t Honor Plea Agreement,” and (3) “Lack of Evidence.” On September 10, 2025, Trial Counsel filed an Affidavit of Counsel in Response and Opposition to Defendant’s Motion for Postconviction Relief. The State also responded opposing Mr. Jensen’s Motion for Postconviction Relief on December 12, 2025. Mr. Jensen had until January 20, 2026, to file a reply brief, but never did. Thus, the matter is now ripe for decision.

4. Before addressing the merits of the case, the Court must first address whether Mr. Jensen’s Motion is procedurally barred under Superior Court Criminal Rule 61(i). Rule 61(i) bars: motions for postconviction relief that are filed more than one year after final judgment; successive postconviction motions; claims not asserted

in the proceedings leading to final judgment; and motions based on a formerly adjudicated ground.

5. Rule 61(i)(3) applies to Mr. Jensen's argument that there was a lack of evidence because the issue was not raised in the proceedings leading to final judgment and Mr. Jensen knowingly, intelligently, and voluntarily pled guilty.¹ The Court will consider the merits of Mr. Jensen's remaining claims, which seem to raise ineffective assistance of counsel issues.

6. Under *Strickland v. Washington*, to prevail on a claim for ineffective assistance of counsel, a defendant must satisfy a two-pronged test.² First, the defendant must show that counsel's performance was deficient.³ Counsel's performance is deficient if the defendant can show that "counsel's performance fell below an objective standard of reasonableness."⁴ Second, the defendant must establish that counsel's deficient performance was prejudicial to the defendant.⁵ To establish prejudice, the "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."⁶ The United States Supreme Court has further instructed that "there is no reason for a court deciding an ineffective assistance claim to approach the

¹ *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).

² 466 U.S. 668, 687 (1984).

³ *Id.*

⁴ *Id.* at 688.

⁵ *Id.* at 687.

⁶ *Id.* at 694.

inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.”⁷

7. Mr. Jensen argues that Trial Counsel was ineffective for not getting a “better deal,” failing to withdraw Mr. Jensen’s plea, becoming “upset” with Mr. Jensen’s request to withdraw, and advising Mr. Jensen that “he couldn’t win [the] case.”

8. To “prevail on a claim of ineffective assistance of counsel in connection with a guilty plea, a defendant must demonstrate that, but for his counsel’s unprofessional errors, he would not have pleaded guilty but would have insisted on proceeding to trial.”⁸ “The defendant must make concrete allegations of actual prejudice, and substantiate them, or risk summary dismissal.”⁹

9. The record does not support Mr. Jensen’s assertion that Trial Counsel could have gotten Mr. Jensen a better plea deal because the one offered was the State’s final and best offer. Mr. Jensen did not make any further inquiry on withdrawing the plea after Trial Counsel informed Mr. Jensen that it is very difficult to withdraw a plea once entered. Further, Mr. Jensen’s contention that Trial Counsel was “upset” at Mr. Jensen’s request to withdraw and the purported statement that the case could not be won are unsubstantiated conclusory allegations with no demonstration of

⁷ *Id.* at 697.

⁸ *Cooper v. State*, 954 A.2d 909, 2008 WL 2410404, at *1 (Del. June 16, 2008) (TABLE) (citing *Hill v. Lockhart*, 474 U.S. 52, 58 (1985)).

⁹ *Id.* at *1 (citing *Younger v. State*, 580 A.2d 552, 556 (Del. 1990)).

actual prejudice. Thus, given that Mr. Jensen cannot show that, but for Trial Counsel's errors, he would not have pleaded guilty, but would have insisted on proceeding to trial, Mr. Jensen's claim lacks merit.

10. Mr. Jensen next appears to proffer that the plea agreement was not honored because Trial Counsel was ineffective for failing to object to the victim impact statement from the victim's grandmother at sentencing because she "was not the victim" and biased "because she wanted custody of [the] victim." Even if Trial Counsel's performance was deficient—which it was not—this claim can be dismissed because Trial Counsel's failure to object was not prejudicial.

11. Under 11 *Del. C.* § 9403(8)(a), the victim of a crime has the right to be present and to make a statement at sentencing. The Court has discretion to allow the legal guardian of a minor to make a victim impact statement on behalf of the minor, which is routinely permitted in cases like the one here. Consequently, even if Trial Counsel objected, the objection would not change the outcome of the proceeding.

12. In conclusion, for the foregoing reasons, Mr. Jensen's Motion for Postconviction Relief under Superior Court Criminal Rule 61 is **DENIED**.

IT IS SO ORDERED.

/s/ Calvin Scott
Judge Calvin L. Scott, Jr.