IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	:	
	:	
v.	:	I.D. No.: 2305013446
	:	
THOMAS CLARK	:	
	:	
Defendant.	:	

ORDER

Submitted: August 4, 2026
Decided: November 20, 2026

ORDER

On this 20th day of November, 2026, after considering Defendant Thomas Clark's Motion for Postconviction Relief, the filing provided by Mr. Clark's plea counsel, the State's opposition, the Commissioner's Report and Recommendation, and the record in this case, **IT APPEARS THAT:**

1. On September 24, 2024, Mr. Clark pled guilty to Possession of Firearm Ammunition by a Person Prohibited and Carrying a Concealed Deadly Weapon – a Firearm.[1] On that same date, a motion to suppress hearing was scheduled before the Court.[2] Mr. Clark, however, opted to waive his right to a suppression hearing, indicating that he wished to resolve the charges against him through a plea agreement

[1] Tr. of Guilty Plea, D.I. 42 (Sept. 24, 2024).

[2] Id. at 5.

with the State.[3] The parties requested deferred sentencing.[4] The Court conducted a plea colloquy with Mr. Clark, accepted his guilty plea, and scheduled sentencing for October 1, 2024.[5]

2. On October 1, 2024, the Court convened a sentencing hearing for Mr. Clark.[6] At that time, counsel for Mr. Clark ("Plea Counsel") explained to the Court that Mr. Clark opted to forgo his scheduled suppression hearing because, "had he not been successful with the motion, the State would have withdrawn the plea offer that had been made before. If he had been convicted at trial, he would have been looking at a significant amount of time."[7] Plea Counsel further stated, "after reviewing all that, [Mr. Clark] made, I think, the best choice possible, which was to accept this plea offer, which was the best plea offer received to date, and better than the prior offer before the suppression hearing had been scheduled."[8] After Plea Counsel and Mr. Clark finished their sentencing remarks, the Court sentenced Mr. Clark to an

[3] Id.

[4] Id. at 4.

[5] Id. at 12-13.

[6] Tr. of Sentencing, D.I. 43 (Oct. 1, 2024) (Due to routine Court scheduling procedures, the undersigned Judicial Officer handled Mr. Clark's sentencing after a different Judicial Officer accepted Mr. Clark's guilty plea).

[7] Id. at 6.

[8] Id.

aggregate of seven years at supervision Level V, followed by descending levels of supervision.[9] That sentence mirrored the terms recommended by Mr. Clark and the State in the plea agreement.[10]

3. Mr. Clark did not file a direct appeal of his sentence. On August 14, 2025, Mr. Clark filed the instant Motion for Postconviction Relief under Superior Court Criminal Rule 61.[11] Contemporaneous to his Rule 61 Motion, Mr. Clark filed a Motion for Appointment of Counsel.[12] Mr. Clark's Rule 61 Motion set forth three grounds for relief: (1) the Court illegally sentenced Mr. Clark by enhancing his sentence without complying with the requirements of Erlinger v. United States;[13] (2) the indictment against Mr. Clark "failed to conform [sic];" and (3) ineffective assistance of counsel for failure to suppress the indictment or preserve "viable claims of a constitutional nature and present best possible representation for defendant."[14]

[9] Id. at 8-10.

[10] Id.

[11] D.I. 28 (Aug. 14, 2025).

[12] D.I. 29 (Aug. 14, 2025).

[13] 602 U.S. 821 (2024).

[14] Mot. for Postconviction Relief at 3.

4. On August 18, 2025, the Court referred Mr. Clark's Motion for Postconviction Relief to a Superior Court Commissioner (the "Commissioner") under Superior Court Criminal Rule 62.[15] The Court also signed an order instructing the Office of Conflicts Counsel to appoint representation for Mr. Clark.[16] The order appointing counsel resulted from a clerical error. After discovering that error, the Court vacated the order appointing counsel on September 11, 2025.[17]

5. On February 17, 2026, Mr. Clark submitted a filing titled "Affidavit."[18] After reviewing the document, the Commissioner determined Mr. Clark intended to amend his Motion for Postconviction Relief.[19] The Commissioner noted "Mr. Clark [ ] failed to follow the proper procedures," but accepted the "Affidavit" as an Amended Motion for Postconviction Relief.[20] In his Amended Motion for Postconviction Relief, Mr. Clark clarified his asserted grounds for relief as: (1) law enforcement violated his Fourth Amendment rights by conducting an illegal search and seizure; (2) ineffective assistance of counsel based on Plea Counsel's alleged

[15] D.I. 30 (Aug. 18, 2025).

[16] D.I. 31 (Aug. 18, 2025).

[17] D.I. 34 (Sept. 11, 2025).

[18] D.I. 38 (Feb. 17, 2026) (hereinafter, "Am. Mot. for Postconviction Relief. at __").

[19] D.I. 39 (Feb. 20, 2026).

[20] Id. at 1-2.

failure to litigate any suppression issues or contest the indictment; and (3) a violation of Mr. Clark's due process rights based on perceived deficiencies in the indictment.[21]

6. On March 2, 2026, Mr. Clark filed a Motion for Correction of an Illegal Sentence Pursuant to Superior Court Criminal Rule 35(a).[22] Mr. Clark contended his sentence was subject to an illegal enhancement because Erlinger required a jury to determine if he possessed prior felony convictions.[23] On March 26, 2026, the Court issued an order denying Mr. Clark's motion, finding his sentence had not been enhanced at all.[24] Moreover, the Court noted Mr. Clark received the sentence negotiated and recommended by the parties at the time he entered into a plea agreement with the State.[25] Mr. Clark did not appeal the Court's decision.

7. Plea Counsel filed a letter with the Court addressing Mr. Clark's allegations on April 20, 2026.[26] Plea Counsel denied that Mr. Clark received an illegal sentence.[27] Based on his review, Plea Counsel also denied that the indictment

[21] Am. Mot. for Postconviction Relief at 1-2.

[22] D.I. 41 (Mar. 2, 2026).

[23] Id. at 2-3.

[24] State v. Clark, 2026 WL 850572, at *2 (Del. Super. Mar. 26, 2026).

[25] Id.

[26] D.I. 45 (Apr. 20, 2026).

[27] Id. at 1-2.

against Mr. Clark was insufficient or "lacking essential elements."[28] Plea Counsel reiterated that he filed a motion to suppress based on law enforcement's search of Mr. Clark.[29] Mr. Clark opted, however, to resolve his matter through a plea agreement at the time of the suppression hearing rather than continue to litigate the suppression issues.[30]

8. The State filed its Response on May 20, 2026.[31] The State noted Mr. Clark "waived his rights, including those related to suppression of evidence, during his plea colloquy."[32] The State argued the Court should deny each of Mr. Clark's grounds for postconviction relief.[33]

9. On June 5, 2026, Mr. Clark filed a "Motion to Compelle [sic]" seeking to have his sentence modified to remove a no unlawful contact provision with the mother of his children.[34] The Court scheduled a Review of Sentence hearing to consider Mr. Clark's motion.[35] The Court held that hearing on July 17, 2026, at

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[28] Id.

[29] Id. at 2-3.

[30] Id.

[31] D.I. 46 (May 20, 2026).

[32] Id. at 3.

[33] Id. at 7-8.

[34] D.I. 47 (June 5, 2026).

[35] D.I. 48 (June 10, 2026).

which time the Court modified Mr. Clark's sentence to strike the no unlawful contact provision.[36]

10. The Commissioner issued her Report and Recommendation (the "Report") on July 17, 2026.[37] The Report found Mr. Clark's arguments regarding the legality of his sentence were barred under Superior Court Criminal Rule 61(i)(4) as previously adjudicated by the Court in its ruling regarding Mr. Clark's Motion for Sentence Modification.[38] The Report determined Mr. Clark's other claims were based, at least in part, on claims of ineffective assistance of counsel.[39] Although those claims were not procedurally barred, the Report concluded Mr. Clark's claims were meritless.[40]

11. Under Superior Court Criminal Rule 62, a party wishing to object to any portion of a Commissioner's proposed findings of fact and recommendations of law must serve those objections within 10 days of a report's issuance. Mr. Clark declined to file any objections to the Report. Accordingly, he waived his ability to object to any findings made in the Report.

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[36] See D.I. 53 (July 20, 2026) (sentence order modifying Mr. Clark's sentence).

[37] D.I. 52 (July 17, 2026).

[38] Id. at 7.

[39] Id. at 8.

[40] Id. at 13-14.

12. In the Court's review of the Report, it appears the Report relied on an incorrect standard of review. The Report outlined a defendant moving for postconviction relief following a guilty plea must show that, "but for counsel's error, [the defendant] would not have pled guilty and would have insisted on going to trial [–] and that the result of a trial would have been [the defendant's] acquittal."[41] As explained by the Delaware Supreme Court, however, "in the context of a plea agreement, the defendant must show that 'there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."[42] Given this discrepancy, the Court declines to adopt the Report, and, instead, will conduct a *de novo* review of Mr. Clark's allegations.

13. The Court begins by addressing Mr. Clark's Motion for Appointment of Counsel. As Mr. Clark entered a guilty plea, Superior Court Criminal Rule 61(e)(3) governs the appointment of postconviction counsel. Rule 61(e)(3) permits the Court to appoint counsel if the Court determines that:

> (i) the conviction has been affirmed by final order upon direct appellate review or direct appellate review is unavailable; (ii) the motion sets forth a substantial claim that the movant received ineffective assistance of counsel in relation to the plea of guilty or nolo contendere; (iii) granting the motion would result in vacatur of the

[41] Id. at 9.

[42] Sample v. State, 2026 WL 2445490, at *2 (Del. Aug. 19, 2026) (TABLE) (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

> judgment of conviction for which the movant is in custody, and (iv) specific exceptional circumstances warrant the appointment of counsel.

The Court does not find that Mr. Clark's filings set forth a substantial claim that he received ineffective assistance of counsel. Nor do specific exceptional circumstances warrant the appointment of counsel. Accordingly, Mr. Clark's Motion for Appointment of Counsel is **DENIED**.

14. Regarding Mr. Clark's claim that his sentence qualifies as illegal, the Court finds that argument procedurally barred under Superior Court Criminal Rule 61(i)(4). The Court has previously considered – and rejected – Mr. Clark's assertion that his sentence was illegally enhanced.[43] Were that claim not procedurally barred, it would fail for the reasons articulated in the Court's previous order.[44]

15. The remainder of Mr. Clark's claims are premised, at least partially, on claims of ineffective assistance of counsel. Mr. Clark filed his Motion for Postconviction Relief in a timely fashion, has not filed successive motions for postconviction relief, and – aside from the claim regarding the legality of his sentence – has not become subject to the procedural bar of Rule 61(i)(e).[45] Thus,

[43] See Clark, 2026 WL 850572, at *2.

[44] Id.

[45] See Green v. State, 238 A.3d 160, 175 (Del. 2020).

those claims are not procedurally barred, and the Court will consider them on their merits.

16. Claims of ineffective assistance of counsel are evaluated under the two-prong test elucidated in Strickland v. Washington.[46] For the first prong, Mr. Clark must establish that Plea Counsel's representation fell below an objective standard of reasonableness.[47] For the second prong, he must show Plea Counsel's deficient representation caused substantial prejudice.[48] As Mr. Clark entered a guilty plea, he must demonstrate that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."[49] The Court need not "address both components of the inquiry if the defendant makes an insufficient showing on one."[50]

17. Several of Mr. Clark's claims attack the sufficiency of the indictment against him. At the time Mr. Clark pled guilty to two counts of that indictment, the Court asked Mr. Clark if: (1) he read or had read to him the charges contained in the indictment; (2) he understood those charges, "together with the elements that make

[46] 466 U.S. 668, 668 (1984).

[47] Green, 238 A.3d at 174.

[48] Id.

[49] Sample, 2026 WL 2445490, at *2 (internal quotations omitted) (quoting Hill, 474 U.S. at 59)).

[50] Strickland, 466 U.S. at 697.

up those charges and the evidence in [his] case that make up those elements;" and (3) he intended to enter a guilty plea because he was, in fact, guilty of possession of firearm ammunition by a person prohibited and carrying a concealed deadly weapon.[51] Despite his attestation that he understood the indictment and wished to enter a guilty plea based on two counts of the indictment, Mr. Clark now argues Plea Counsel rendered ineffective assistance of counsel by failing to contest the indictment's sufficiency.[52]

18. "An indictment is sufficient if the offense is charged substantially in the words of the statute, or its equivalent language."[53] Mr. Clark pled guilty to Count 3 and Count 4 of the indictment against him. Count 3 identifies the relevant statute as 11 Del. C. § 1448 and reads, in part, "Thomas R. Clark, on or about the 26th day of May, 2023, in the County of Kent, State of Delaware, did knowingly purchase, own, possess[,] or control firearm ammunition after having been convicted of a felony or a crime of violence involving physical injury…"[54] Count 4 notes the relevant statute as 11 Del. C. § 222(12) and outlines that, "Thomas R. Clark, on or about the 26th day

[51] Tr. of Guilty Plea at 7-9.

[52] Am. Mot. for Postconviction Relief at 1-2.

[53] State v. McGuiness, 2022 WL 1538488, at *2 (Del. Super. May 13, 2022) (internal quotations omitted) (quoting State v. Allen, 112 A.2d 40, 43 (Del. Super. 1955).

[54] D.I. 5 (Sept. 5, 2023).

of May, 2023, in the County of Kent, State of Delaware, did knowingly and unlawfully carry concealed upon or about his person, a handgun, a firearm, as defined under 11 Del. C. § 222(12)."[55]

19. The Court's review of the indictment against Mr. Clark reveals no deficiencies in the indictment. As the indictment was sufficient, Plea Counsel's alleged failure to challenge the sufficiency of the indictment cannot form the basis for a claim of ineffective assistance of counsel. Plea Counsel's conduct did not fall below an objective standard of reasonableness. Moreover, given Mr. Clark's responses during his guilty plea colloquy, Mr. Clark has failed to demonstrate that, but for Plea Counsel's failure to challenge the sufficiency of the indictment, Mr. Clark would have insisted on proceeding to trial.

20. Mr. Clark's final claims for postconviction relief center on the suppression of evidence in his case. Mr. Clark contends law enforcement violated his Fourth Amendment rights by conducting an illegal search and seizure.[56] Mr. Clark further posits Plea Counsel's failure to litigate his Motion to Suppress deprived Mr. Clark of an adequate defense.[57]

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[55] Id.

[56] Am. Mot. for Postconviction Relief at 1.

[57] Id.

21. "It is well-settled that a knowing and voluntary guilty plea waives a defendant's right to challenge any errors occurring before the entry of the plea, 'even those of constitutional dimensions.'"[58] During his guilty plea colloquy – which occurred instead of a previously-scheduled suppression hearing at Mr. Clark's request – Mr. Clark affirmed he understood his rights regarding suppression of evidence.[59] Before Mr. Clark's colloquy, Plea Counsel explained he had discussed the Motion to Suppress with Mr. Clark "in pretty thorough detail;" that Mr. Clark understood he waived his right to a suppression hearing by entering a guilty plea; and that Mr. Clark understood the additional constitutional rights he waived by entering a guilty plea.[60] Mr. Clark agreed he heard everything Plea Counsel stated on his behalf, and confirmed all of Plea Counsel's statements were accurate.[61]

22. Mr. Clark's entry of a guilty plea resulted in a waiver of his right to challenge any search or seizure that may have led to the charges against him. He remains bound by his answers during his guilty plea colloquy, wherein he confirmed he waived his right to litigate any suppression issues. The record indicates Plea

[58] Scarborough v. State, 119 A.3d 43 (Del. 2015) (TABLE) (quoting Wilson v. State, 991 A.2d 19 (Del. 2010) (TABLE)).

[59] Tr. of Guilty Plea at 8.

[60] Id. at 5-6.

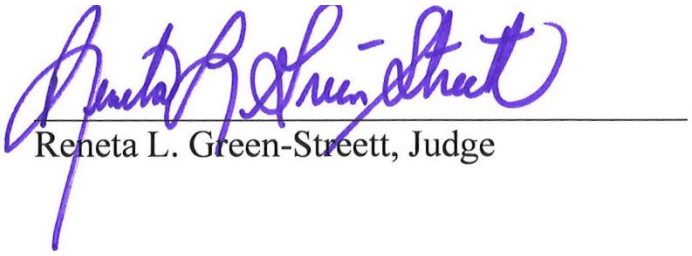
[61] Id. at 7.

Counsel filed a Motion to Suppress, and intended to participate in a suppression hearing on Mr. Clark's behalf. Thus, Mr. Clark's assertion that Plea Counsel rendered ineffective assistance of counsel by failing to litigate the Motion to Suppress runs contrary to the record and is meritless. By virtue of entering a guilty plea in lieu of proceeding with his suppression hearing, Mr. Clark has also failed to provide any indication that he would have insisted on going to trial.

NOW, THEREFORE, after a *de novo* review of the record in this action, and consideration of the parties' arguments and the Commissioner's Report dated July 17, 2026:

IT IS HEREBY ORDERED that the Commissioner's Report and Recommendation is adopted in part by the Court. The Court adopts the Commissioner's finding that Mr. Clark's claim regarding the legality of his sentence is procedurally barred. The Court declines to adopt the Commissioner's analysis of Mr. Clark's remaining claims. For the reasons stated above, Mr. Clark has failed to satisfy the Strickland test to establish ineffective assistance of counsel. Accordingly, Mr. Clark's Motion for Postconviction Relief Pursuant to Superior Court Criminal Rule 61 is **DENIED**.

IT IS SO ORDERED.



Reneta L. Green-Streett, Judge

RLG/ds
oc: Prothonotary
cc: Department of Justice
Trial Counsel
Mr. Thomas Clark, JTVCC