

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

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GEORGETOWN, DE 19947

February 6, 2004

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RE: State of Delaware v. Luis A. Acevedo
Def. ID# 0210012298

Memorandum Opinion - Motion for Postconviction Relief

Dear Counsel:

This is my decision on defendant Luis A. Acevedo's ("Acevedo") motion for postconviction relief. Acevedo was charged by Indictment on November 25, 2002 with six counts of Rape in the Fourth Degree. Acevedo pled guilty on January 22, 2003 to one count of Rape in the Fourth Degree. I sentenced Acevedo on January 22, 2003 to eight years at supervision level 5, suspended for eight years of declining levels of probation. Acevedo did not file an appeal with the Supreme Court.

Acevedo filed his motion for postconviction relief on July 15, 2003. This is Acevedo's first motion for postconviction relief and it was filed in a timely manner. Therefore, there are no procedural bars to Acevedo's motion for postconviction relief.¹

Acevedo's motion for post conviction relief is based on allegations of ineffective assistance of counsel. Specifically, Acevedo, who is not a resident of the United States, alleges that (1) he was not aware of the ramifications of his guilty plea on his ability to remain in the United States; (2) he is unable to read English and relied entirely on his attorney's advice pertaining to any plea agreement; and (3) his attorney did not represent him personally at the entry of his guilty plea, but rather had another attorney represent him. Acevedo was represented by Thomas D. Donovan, Esquire ("Donovan") and James E. Liguori, Esquire ("Liguori"). Donovan and Liguori both filed affidavits responding to Acevedo's allegations. In order to prevail on his claim of ineffective assistance of counsel, Acevedo must show (1) that Donovan's and Liguori's actions fell below an objective standard of reasonableness; and (2) there exists a reasonable probability that, but for Donovan's and Liguori's errors, Acevedo would not have pled guilty.² Mere allegations of ineffectiveness will not suffice. Acevedo must make specific allegations of actual prejudice and substantiate them.³ Moreover, any review of Donovan's and Liguori's representation is subject to a strong presumption that their representation of Acevedo was professionally reasonable.⁴

¹Younger v. State, 580 A.2d 552, 554 (Del. 1990).

²*Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

³*Wright*, 671 A.2d at 1356; *Younger v. State*, 580 A.2d 552, 555-556 (Del. 1990).

⁴*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

First, Acevedo alleges that he is not a United States citizen and did not know that his guilty plea would result in his deportation. Acevedo, who was in the United States on a non-resident work visa, has been detained by the Immigration and Naturalization Service (“INS”) and is awaiting a deportation hearing. Acevedo alleges that Donovan did not inform him that if the Court adjudged him guilty of Rape in the Fourth Degree, the INS would immediately detain him for deportation proceedings. Donovan admits that he never informed Acevedo of his. However, prior to the entry of Acevedo’s guilty plea, Donovan asked Acevedo if he was a United States citizen. Although Donovan is now unable to recall the exact response given by Acevedo, he was satisfied by his response that Acevedo was a United States citizen. Consequently, Donovan did not act unreasonably when he failed to inform Acevedo of the ramifications of a guilty plea, as Acevedo led him to believe that he was a United States citizen. Therefore, the possibility of deportation was not an issue for Donovan to consider.

Moreover, the Delaware Supreme Court has addressed the risk of deportation when entering a guilty plea.⁵ The Supreme Court has stated that “Delaware has ‘align[ed] ourselves with those jurisdictions which have deemed the risk of deportation a collateral consequence of a guilty plea.’”⁶ Although deportation “is a drastic remedy which has been likened to ‘the equivalent of banishment,’ a ‘savage penalty,’ and a ‘life sentence of exile,’”⁷ this Court has held that it is not necessary to apprise a defendant of a collateral consequence before entering a guilty plea to ensure that it is

⁵*State v. Sutherland-Cropper*, 1996 WL 33347484 (Del. Super. Ct.), *aff’d*, 687 A.2d 197 (Del. 1996) (TABLE).

⁶*Christie v. State*, Del. Supr., No. 252, 1994, Walsh, J. (Dec. 29, 1994) (ORDER) (citations omitted).

⁷*Jordan v. De George*, 341 U.S. 223, 243 (1951); *see also Christie*, 655 A.2d at 839.

knowing and voluntary.⁸ Therefore, Donovan was under no obligation to inform Acevedo of the possible consequences of a guilty plea to a felony by a non-citizen.

Second, Acevedo alleges that he does not read English and relied on Donovan's advice pertaining to any plea agreement. I presume, given the nature of this allegation, that Acevedo is alleging that he was both surprised by the sentence that he received and the consequences of the sentence. However, Acevedo is able to write and speak English fairly well. Donovan confirms that he reviewed the plea offer with Acevedo and both he and Acevedo signed it. Donovan then reviewed the Truth-In-Sentencing Guilty Plea Form, including the range of penalties and the TIS guidelines, with Acevedo. Donovan asked Acevedo each of the questions on the form and checked the appropriate boxes corresponding to each of his answers. Furthermore, the Truth-In-Sentencing Guilty Plea Form provides the following notice to non-citizens: "*Conviction of a criminal offense may result in deportation, exclusion from the United States, or denial of naturalization.*" Despite this notice, Acevedo signed the form. During the plea colloquy, the following exchange took place:

THE COURT: Did you fill out, review and sign the Truth-In-Sentencing Guilty Plea Form?

THE DEFENDANT: Yes, I did.

THE COURT: Did you see those seven rights in bold print on that form?

THE DEFENDANT: Yes.

THE COURT: Did you discuss those rights with your attorney?

THE DEFENDANT: Yes, I did.

THE COURT: Do you understand those rights?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that you are waiving them by entering this plea?

THE DEFENDANT: Yes.

⁸*State v. Stewart*, Del. Super. Ct., Cr.A.No. IN92-09-1424R1, Goldstein, J. (Oct. 20, 1995) (ORDER).

THE COURT: Did you actually commit this offense?

THE DEFENDANT: I was in love with the girl. I did, but I didn't mean to. It wasn't the way it looks.

THE COURT: You did or did not?

THE DEFENDANT: Yes, I did.

THE COURT: Are you satisfied with your attorney's representation of you?

THE DEFENDANT: Yes.

THE COURT: Are you sure you want to do this?

THE DEFENDANT: Yes, sir.

THE COURT: You do not have any doubts, reservations or questions about it?

THE DEFENDANT: No, sir.

Tr. at 4-6. Acevedo is bound by the answers he gave at the plea colloquy.⁹ Acevedo cannot now claim that he did not understand what was occurring. He was charged with six counts of Rape in the Fourth Degree. However, by accepting the plea agreement, he was adjudged guilty of only one count of Rape in the Fourth Degree. It is unfortunate that he is being detained by the INS in a correctional facility awaiting a deportation hearing. However, Donovan's explanation of the plea agreement was more than reasonable.

Third, Acevedo alleges that Donovan provided ineffective assistance of counsel when he asked another attorney to take his place on the day the plea was entered. On the day of the entry of Acevedo's guilty plea, Liguori agreed to enter the plea on the record for Donovan because he had to go to Superior Court in Kent County. Donovan informed Liguori of Acevedo's name, the charges, and the State's recommendation. Donovan also informed Liguori that he explained the charges and the sentence recommendation to Acevedo. Liguori then inquired if Acevedo was a United States

⁹*State v. Denston*, 2003 WL 22293651, at *5 (Del. Super. Ct.), citing *Fullman v. State*, Del. Supr., No. 268, 1988, Christie, C.J. (Feb. 2, 1988) (Order). See *Little v. Allsbrook*, 731 F.2d 238, 239-240, n.2 (4th Cir. 1984); cf. *Patterson v. State*, 684 A.2d 1234, 1238 (Del. 1996).

citizen, if he understood English, and if he understood the plea offer. Although Donovan assumed Acevedo was a United States citizen, Donovan asked Acevedo if he was a United States citizen or if there were any problems with him being in this country. Donovan was satisfied with Acevedo's response that he was a United States Citizen and that he understood the plea and wished to go forward with it.

Before Liguori presented Acevedo to the Court for his plea, Liguori asked Acevedo if he had any questions and whether he understood all that was going to transpire. Liguori contends that Acevedo responded clearly and intelligently when he stated that he understood what was going to occur and that he was pleased with Donovan because the prosecutor agreed to a recommendation of probation. At no time during the conversation with Acevedo did Liguori detect any confusion on the part of Acevedo as to what was going to occur. Donovan and Liguori were both aware of the INS consequences that follow certain plea agreements.

Acevedo also alleges that if he told Donovan that he was a United States citizen, that either he did not understand Donovan's question or that he mistakenly conveyed the wrong information to Donovan. However, there is simply no reason to believe that this is the case. Acevedo was, according to his own motion for postconviction relief, able to speak English fairly well. Given this, it appears that Acevedo did not accurately disclose his citizenship status with Donovan because his primary focus was on not going to jail for the alleged rapes. It appears that Acevedo simply was less than forthcoming about his non-citizenship status. Donovan acted reasonably when he relied on Acevedo's response as to his citizenship. Moreover, Acevedo has not asserted any concrete allegations as to what other investigation Donovan should have done, but did not do, to ascertain Acevedo's true status in this country.

Acevedo must, in order to prevail on his motion for postconviction relief, satisfy the *Strickland* standard.¹⁰ The strong presumption that Donovan's and Liguori's representation fell within the range of reasonable professional assistance has not been rebutted in this case. Acevedo has failed to show that Donovan and Liguori did not reasonably represent him and that but for any errors by Donovan and Liguori, Acevedo would not have pled guilty.

CONCLUSION

For the foregoing reasons, Acevedo's Motion for Postconviction Relief is denied.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

ESB:tl

cc: Prothonotary's Office

¹⁰*Strickland*, 466 U.S. 688 (1984).