SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

1 THE CIRCLE, SUITE 2
COURTHOUSE
GEORGETOWN, DE 19947

January 28, 2003

Lester M. Andrick
Delaware Correctional Center
P.O. Box 500
Smyrna, DE 19977

Melanie C. Withers, Esquire
Department of Justice
114 East Market Street
Georgetown, DE 19947

E. Stephen Callaway, Esquire
Office of the Public Defender
14 The Circle, 2nd Floor
Georgetown, DE 19947

RE: State of Delaware v. Lester M. Andrick
Def. ID# 0108007887
Memorandum Opinion - Motion for Postconviction Relief

Dear Counsel and Mr. Andrick:

This is my decision on defendant Lester M. Andrick's motion for postconviction relief.[1] Andrick was charged by Information with two counts of Rape in the First Degree, one count of Unlawful Sexual Contact in the Second Degree and one count of Indecent Exposure in the First Degree. Andrick pled guilty to one count of Rape in the Third Degree and was sentenced to 20 years at supervision level V, suspended after serving 15 years at supervision

[1]Defendant Lester M. Andrick is hereinafter referred to as "Andrick."

level V for two years at supervision level III.

Andrick filed his motion for postconviction relief on October 21, 2002. Andrick sets forth two grounds for relief. One, Andrick argues that his attorney "misled him into believing that he would only be sentenced to two years in jail and did nothing to defend him." Two, Andrick argues that his attorney should have requested DNA testing. Andrick took no direct appeal to the Supreme Court. This is Andrick's first motion for postconviction relief and it was filed in a timely manner. Therefore, there are no procedural bars to Andrick's motion for postconviction relief.[2]

Regarding Andrick's ineffective assistance of counsel claim, he must meet the two-prong test set forth in *Strickland v. Washington*.[3] In the context of a guilty plea challenge, Strickland requires a defendant to show that: (1) counsel's representation fell below an objective standard of reasonableness; and (2) counsel's actions were so prejudicial that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial.

There is no merit to any of Andrick's grounds for relief. Andrick argues that his lawyer was ineffective because he told him that he would only receive a sentence of two years of incarceration. Andrick's lawyer, E. Stephen Callaway, in a sworn affidavit, denied ever telling Andrick that he would receive this sentence. The Truth-In-Sentencing Guilty Plea Form states that Andrick faced a sentence from two to twenty years of incarceration. The Plea Agreement states that the State would recommend a sentence of 20 years of incarceration, suspended after 15

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

[3]466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

years of incarceration for 2 years of probation. The following excerpt from the plea colloquy shows that Andrick was again made aware of the sentence that he faced.

> THE COURT: Do you understand that you could receive up to 20 years in jail on that charge?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Do you understand you have to serve at least two years in jail on that charge?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Do you understand that even though the State and you attorney have made a recommendation to me as to what your sentence ought to be, that I am not bound by that recommendation?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Do you understand that I can ignore that recommendation and instead impose the maximum penalty allowed?
>
> THE DEFENDANT: Yes, sir.

Andrick is bound by the sworn statements that he made during the plea colloquy.[4] There is no doubt that Andrick knew, when he entered this plea, that he faced a sentence up to twenty years of incarceration.

Andrick argues that Callaway did nothing to help him. However, Andrick does not allege what Callaway should have done that he did not do. As such, Andrick's allegations are baseless. I do note that Callaway and Andrick did review the Child Advocacy Center tapes and that the case came down to, in Callaway's words, the victim's allegations.

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[4]Sommerville v. State, 703 A.2d 629, 632 (Del. 1997).

Andrick argues that Callaway should have gotten DNA testing. Callaway's response is that there was no DNA material to test because no medical exam was done on the victim due to the long period of time between the alleged incidents and the dates they were reported. Thus, since there was nothing to test, Callaway cannot be faulted for not ordering the DNA testing.

For the reasons set forth above, Andrick's motion for postconviction relief is denied.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

ESB:tll

cc: Prothonotary's Office