

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE	)	
	)	
v.	)	Cr.A. No. IN98-03-1928R1,1929R1, 1930RI,1932R1
	)	
GALEN C. COLLINS	)	ID# 9802013395

Date Submitted: December3, 2001  
Date Decided: January 29, 2002

*Upon Defendant's Motion for Postconviction Relief: **DENIED.***

**ORDER**

This \_\_\_\_ day of January, 2002, upon consideration of the Defendant's Motion for Postconviction Relief, it appears to this Court that:

1. On February 17, 1998, Defendant Galen Collins, along with Defendants Dion Oliver and Abraham Farnum was arrested and charged with one count of Trafficking in Cocaine-Over 100 grams, two counts of Reckless Endangering First Degree, two counts of Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance, one count of Carrying a Concealed Deadly Weapon, one count of Possession of a Firearm During the Commission of a Felony, one count of Use of a Vehicle for Keeping Controlled Substances, one count of Resisting Arrest, and several other traffic violations.
2. After extensive negotiations with the Defendants and their attorneys a plea agreement was reached.

3. The terms of the plea agreement called for Defendant Dion Oliver to plead to two counts of Reckless Endangering, and one count of Trafficking in Cocaine-50-100 grams in exchange for a Rule 11 (e)(1)(c) sentence of 10 years in prison and the state's *nolle prosequi* of the remaining charges. Defendants Abraham Farnum and Galen Collins plea agreement required them to plead guilty to one count of the lesser included offense of the state's *nolle prosequi* of the remaining charges.

4. A condition attached to the plea offer by the State required that this be an all or nothing plea, or a "wired plea."<sup>1</sup> This requires all of the Defendants to accept the plea. If one of the Defendants rejects the plea, the offer is revoked to the other two. This condition to the plea offer was made clear to the Defendants and their attorneys since the beginning of the plea negotiations.

5. On July 19, 1999, the final case review was held for this case. On that date, all of the defendants were to have pled guilty pursuant to the plea agreement described above. Galen Collins accepted the plea agreement and entered a plea of guilty in Superior Court. In the short time between his acceptance and his co-defendant Dion Oliver's case review, Oliver changed his mind and rejected the plea offer.

6. The Defendants and their attorneys admittedly understood from the beginning of the negotiations that it was a condition of the plea that all three of the defendants had to accept the plea offer or it was retracted. Oliver's rejection of the plea violated this condition and voided the offer to his co-defendants, making Glen Collins plea agreement voidable by the State.

7. The Delaware Supreme Court has held that "In the event that a defendant proceeds to breach any subsequent obligations under the plea agreement, the prosecution may, if the plea

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<sup>1</sup>*United States v. Pollard*, U.S. Supr., 506 U.S. 915, 113 S.Ct. 1322 (1992).

agreement so provides, move to vacate the defendant's agreed-upon conviction and sentence, reimposing the original charges without violating double jeopardy principles.<sup>2</sup>

8. On July 23, 1999, the State filed a motion to vacate the plea of Galen Collins, reimposing the original charges. The plea was vacated on September 27, 1999. A jury trial was held from February 15, 2000 to February 17, 2000. Defendant was sentenced on May 26, 2000.

9. From February 17, 2000, to August 28, 2000, a series of letters were written, and a number of motions were filed by Joseph M. Bernstein, counsel for the Defendant, on behalf of the Defendant. The motions included Motion to Transfer Charges to Family Court for Sentencing, Motion to Reinstate Defendant's Guilty Plea, Motion to Preclude Sentencing of Defendant as an Adult, and Motion for Transcript. With the exception of the Motion for Transcript, they were all denied.

10. Defendant now files his motion for postconviction relief and alleges as his grounds for relief the following claims: (a) ineffective assistance of counsel for failure to raise due process, lack of jurisdiction or double jeopardy, (b) double jeopardy clause, and (c) violation of due process and presumption of vindictiveness.

11. Under Delaware law, the Court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of the postconviction relief claim.<sup>3</sup> Under Rule 61(i), claims for relief must be brought within three (3)

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<sup>2</sup>*Zebroski v. State of Delaware*, Del. Supr., 715 A.2d 75 (1995); See Also *Ricketts v. Adamson*, U.S. Supr, 483 U.S. 1, 107 S.Ct. 2680 (1987).

<sup>3</sup>*Bailey v. State*, Del. Supr., 588 A.2d 1121, 1127 (1991); *Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990); (citing *Harris v. Reed*, 489 U.S. 225 (1989)).

years of the conviction becoming final.<sup>4</sup> Any ground for relief not asserted in a prior postconviction motion is thereafter barred unless consideration of the claim is necessary in the interest of justice.<sup>7</sup> Similarly, grounds for relief not asserted in the proceedings leading to the judgment of conviction are thereafter barred, unless the movant demonstrates: (1) cause for the procedural default, and (2) prejudice from the violation of the movant's rights.<sup>8</sup> Additionally, any ground for relief that was formerly adjudicated, whether in a proceeding leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.<sup>9</sup>

12. Even though on its face Defendant's motion appears to be a postconviction relief motion alleging ineffective assistance of counsel, it appears to the Court that this motion is actually Defendant's attempt to rehash the matter of the Reinstatement of the Guilty Plea, that has already been adjudicated.

Throughout the motion, Defendant repeatedly refers to the wired guilty plea offer by the State, and how it should be reinstated. While alleging ineffective assistance of counsel, for example, Defendant states how "the Contract had already been perfected and the movant had begin serving the Court's sentence that was imposed." That "the movant asserts that he was sentenced as promised. Therefore, the State must fulfill any promises that it expressly or impliedly makes in exchange for a defendant's guilty plea." And that "the movant asserts that the sentence under the

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<sup>4</sup>Del. Super. Ct. Crim. R. 61(i)(1).

<sup>7</sup>Del. Super. Ct. Crim. R. 61(i)(2).

<sup>8</sup>Del. Super. Ct. Crim. R. 61(i)(3).

<sup>9</sup>Del. Super. Ct. Crim. R. 61(i)(4).

plea was appropriate, for all the reasons stated at the time of sentencing and that sentence was a final judgement. Mr. Bernstein was ineffective because he failed to hold the State to enforce procedural due process or due consideration.”

In alleging double jeopardy, Defendant states that “the trial resulting in this latter procedure is impermissible and violates the Double Jeopardy principles.”

In alleging violation of due process, Defendant asserts that the trial, conviction and sentence violates procedural due process because “there was a valid plea agreement and sentence imposed prior to going to trial.” And that “the latter trial and sentence is presumptively vindictive because the record utterly lacks objective information that would be sufficient to rebut the presumption.”

13. It appears to this Court that Defendant has attempted to avoid procedural bars by cloaking the claim in his motion to reinstate guilty plea, which was filed on April 14, 2000, and denied by Judge Quillen on May 3<sup>rd</sup>, 2000, in terms of ineffective representation.

14. Neither federal nor state courts are required to relitigate in postconviction proceedings those claims which have been previously resolved.<sup>10</sup>

15. Under the circumstances, this Court finds that reconsideration of the claim is not warranted in the interest of justice. Defendant’s motion for postconviction relief must be denied as it is procedurally barred pursuant to Rule 61(i)(4). To protect the integrity of the procedural rules, the Court will not consider the merits of the postconviction claims where a procedural bar exists.<sup>11</sup>

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<sup>10</sup>See *Kuhlmann v. Wilson*, 477 U.S. 436, 445-55, 106 S.Ct. 2616, 2621-2628, 91 L.Ed.2d 364 (1986); *Sanders v. United States*, 373 U.S. 1, 7-22, 83 S.Ct. 1068, 10L.Ed.2d 148 (1963).

<sup>11</sup>*State v. Gattis*, Del. Super., Cr. A. No. IN90-05-1017, Barron, J. (Dec. 28, 1995)(citing *Younger v. State*, 580 A.2d. At 554; *Saunders v. State*, Del. Supr., No. 185, 1994, Walsh, J. (Jan. 13, 1995)(ORDER); *Hicks v. State*, Del. Supr., No. 417, 1991, Walsh, J. (May 5, 1992)(ORDER)).

16. Based upon the foregoing, Defendant's Motion for Postconviction Relief is **DENIED**.

**IT IS SO ORDERED.**

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The Honorable Richard S. Gebelein

Orig: Prothonotary  
CC: Mr. Galen C. Collins – DCC