

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

STATE OF DELAWARE)	
)	
)	
)	
v.)	I.D. # 0512021018
)	
VARDON CRAWLEY,)	
)	
Defendant.)	
)	

Submitted: December 30, 2008
Decided: January 14, 2009

Upon Defendant's Motion for Postconviction Relief.
DENIED.

ORDER

Brian J. Robertson, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Vardon Crawley, Smyrna, Delaware, *pro se*.

PARKINS, J.

This 14th day of January 2009, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

1. On August 1, 2006, after a four day trial, a jury found Defendant guilty of Attempted Murder in the First Degree, Possession of a Firearm During the Commission of a Felony, and Possession of a Deadly Weapon by a Person Prohibited. On November 17, 2006, the Court sentenced Defendant to a cumulative 39 years at Level V, suspended after 30 years for decreasing levels of supervision. On May 23, 2007, the Supreme Court affirmed Defendant's convictions on appeal.¹

2. Defendant filed this *pro se* first motion for postconviction relief on May 21, 2008, alleging four grounds for relief. Defendant's trial and appellate counsel both filed affidavits in response to the claims of ineffective assistance of counsel contained in Defendant's motion. The State also filed a response to Defendant's motion.

3. When considering a motion for postconviction relief, the Court must first apply the procedural bars of Superior Court Criminal Rule 61. If a potential bar exists, then the claim is barred, and the Court should not consider the merits of the postconviction claim. Rule 61(i)(3) will bar any ground for relief that was not asserted at trial or on direct appeal, unless the defendant can show (A) cause for relief from the procedural bar and (B)

¹ *Crawley v. State*, 2007 WL 1491448 (Del. Supr.).

prejudice from a violation of his rights.² A claimant can also avoid this procedural bar, if under 61(i)(5) the claimant can show “a colorable claim that there was a miscarriage of justice because of a constitutional violation.” In addition, Rule 61(i)(4) will bar any ground for relief that was formerly adjudicated, unless reconsideration is warranted in the “interest of justice.”³

4. Defendant’s first ground for relief is that the “Court and the State failed to insulate the Defendant’s jury trial proceedings from the diversions and distractions of ‘Russian-speaking guests’ in the United States,” which amounted to a “denial of due process.”⁴ This claim is procedurally barred pursuant to Rule 61(i)(3) because Defendant did not raise it on appeal, nor has Defendant demonstrated cause or prejudice pursuant to Rule 61(i)(3)(A) and (B).⁵ Moreover, this conclusory claim does not warrant review pursuant to Rule 61(i)(5).⁶

5. Defendant’s second ground for relief alleges that his conviction was obtained “by use of evidence gained pursuant to a warrantless search of

² Super. Ct. Crim. R. 61(i)(3).

³ *Id.* at 61(i)(4).

⁴ Def. Mot. for Postconviction Relief, D.I. 51, at 1.

⁵ *See State v. Pierce*, 2000 WL 303454 (Del. Super.) (stating that a “showing of cause is not satisfied by showing merely that a claim was not timely raised; a movant must show “some external impediment” which prevented him from raising the claim” and that to “show prejudice, a movant must show a ‘substantial likelihood’ that if the issue had been raised on appeal, the outcome would have been different”).

⁶ *See Younger v. State*, 580 A.2d 552, 555 (Del. 1990) (“The fundamental fairness exception (as set forth in Superior Court Criminal Rule 61(i)(5)) is a narrow one and has been applied only in limited circumstances, such as when the right relied upon has been recognized for the first time after the direct appeal.”).

home without exigent circumstances.”⁷ This claim is also barred by Rule 61(i)(3) because Defendant did not raise it on direct appeal nor has he demonstrated that an exception to Rule 61(i)(3) applies. The record indicates that the search in this case was performed after the investigators obtained valid consent from the persons identified as the homeowners. Therefore, this claim is procedurally barred and does not warrant consideration pursuant to Rule 61(i)(5).

6. Defendant’s third ground for relief is that his conviction was improperly obtained “by extensive use of prior uncharged crimes, bad acts and bad character.” Defendant raised this claim on direct appeal and the Delaware Supreme Court held that “defense counsel made a tactical decision to use the drug related evidence in a way he believed to be to his client’s advantage: that tactical decision constitutes a waiver and bars plain error review.”⁸ Defendant does not demonstrate that this claim should be relitigated in the interest of justice.⁹ Therefore, this claim is barred by Rule 61(i)(4).

⁷ Def. Mot., at 6.

⁸ *Crawley*, 2007 WL 1491448, at *1.

⁹ See *Flamer v. State*, 585 A.2d 736, 746 (Del.1990) (holding that “[i]n order to invoke the ‘interest of justice’ provision of Rule 61(i)(4) to obtain relitigation of a previously resolved claim a movant must show that subsequent legal developments have revealed that the trial court lacked the authority to convict or punish him”).

7. Defendant's fourth ground for relief alleges ineffective assistance of counsel. To succeed on an ineffective assistance of counsel claim, Defendant must show both (a) "that counsel's representation fell below and objective standard of reasonableness" and (b) "that there is a real probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different."¹⁰ Failure to satisfy one prong will render the claim unsuccessful and the court need not address the remaining prong.

8. Defendant's ineffective assistance of counsel claims have no basis in fact or in law. For example, one of his claims alleges that counsel did not interview or subpoena "alibi witnesses" Dorissa Norwood, Nicole Lynch, or "Colleen K."¹¹ As trial counsel's affidavit states, however, counsel did interview all three of those witnesses and none could provide an alibi. Furthermore, trial counsel reviewed the results of the interviews with Defendant and Defendant agreed that those witnesses should not testify at trial, although two of them were subpoenaed.

9. Defendant's ineffective assistance of counsel claims are also based, in part, on counsel's failure to object to the alleged "illegal search." The record is clear that the police had valid consent to search the house in this case and that there was no basis to object to the search. In addition, Defendant claims

¹⁰ *Stickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

¹¹ Def. Mot, at 13.

that counsel was ineffective by failing to object to certain questions about Defendant's prior bad acts. Defense counsel made a strategic decision to use evidence of drug activity to suggest that Defendant had been misidentified. Under the circumstances, defense counsel's tactical decision does not constitute ineffective assistance of counsel.¹²

10. None of Defendant's claims demonstrate either that defense counsel's representation was unreasonable or that Defendant suffered prejudice as a result of counsel's performance. Therefore, Defendant's allegations fail to establish a claim of ineffective assistance of counsel.

11. For the reasons stated, Defendant's Motion for Postconviction Relief is **DENIED**.

IT IS SO ORDERED.

John A. Parkins, Jr.

oc: Prothonotary
cc: Dean C. Delcollo, Esquire
Bernard J. O'Donnell, Esquire

¹² See *Stickland*, 466 U.S. at 689 (stating that when evaluating counsel's performance, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of professional assistance").