SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

P.O. Box 746
COURTHOUSE
GEORGETOWN, DE 19947

January 27, 2004

Carlton L. Harding
Delaware Correctional Center
P.O. Box 500
Georgetown, DE 19947

James W. Adkins, Esquire
Department of Justice
114 East Market Street
Georgetown, DE 19947

Carole J. Dunn, Esquire
Office of the Public Defender
Mellon Bank Building, 2nd Floor
Georgetown, DE 19947

RE: State of Delaware v. Carlton Harding
Def. ID# 0203010637
Memorandum Opinion - Motion for Postconviction Relief

Dear Mr. Harding and Counsel:

This is my decision on defendant Carlton L. Harding's ("Harding") motion for postconviction relief. Harding was charged by indictment on April 15, 2002 with three counts of Rape in the Second Degree, Attempted Robbery in the First Degree, Burglary in the First Degree, Theft of a Senior, and Conspiracy in the Second Degree. Harding pled guilty on October 9, 2002 to one count each of Rape in the Second Degree and Attempted Robbery in the First Degree. I sentenced Harding on March 28, 2003 to 40 years at supervision level V, suspended after serving 20 years at supervision level V for 10 years of declining levels of probation. Harding did not file an appeal with the Supreme Court. Harding filed his motion for postconviction relief on September 22, 2003. This is

Harding's first motion for postconviction relief and it was timely filed. Therefore, there are no procedural bars to Harding's motion for postconviction relief.[1]

Harding, in support of his motion for postconviction relief, alleges both ineffective assistance of counsel and prosecutorial misconduct. Harding was represented by Carole J. Dunn, Esquire ("Dunn"). The State of Delaware was represented by James W. Adkins ("Adkins"). Dunn and Adkins responded to Harding's allegations by affidavit.

A. Ineffective Assistance of Counsel

Harding alleges that Dunn promised him that he would not be sentenced to the minimum mandatory period of incarceration[2] and that he would not serve more than ten years. In order to prevail on his claim of ineffective assistance of counsel, Harding must show (1) that Dunn's actions fell below an objective standard of reasonableness; and (2) there exists a reasonable probability that, but for Dunn's errors, Harding would not have pled guilty.[3] Mere allegations of ineffectiveness will not suffice. Harding must make specific allegations of actual prejudice and substantiate them.[4] Moreover, any review of Dunn's representation is subject to a strong presumption that her respresentation of Harding was professionally reasonable.[5]

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

[2] The minimum mandatory sentence for Rape in the Second Degree is 10 years at supervision level V. 11 *Del. C.* § 772(c). The minimum mandatory sentence for Attempted Robbery in the First Degree is two years at supervision level V. 11 *Del. C.* § 4205(b)(2).

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

[4] *Wright*, 671 A.2d at 1356; *Younger v. State*, 580 A.2d 552, 555-56 (Del. 1990).

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

Dunn denies Harding's allegations and all of the information in this matter makes it clear that Harding knew he would have to serve at least 12 years and that he could serve up to 40 years. The statutory mandatory minimum for the crimes that Harding committed is a total of 12 years at supervision level V. Dunn provided Harding with copies of the statutes defining the charges with which he was charged, noted the sentence ranges, and even underlined the minimum mandatory level V sentences required if he were to be convicted. Dunn also informed Harding, before and after the entry of the guilty plea, of the minimum mandatory time of 12 years, and that no one could do anything about the minimum required time for both offenses.

The Truth-In-Sentencing Guilty Plea Form indicates that the minimum mandatory period of incarceration for the crimes to which Harding pled guilty is 12 years. Further, Harding checked the box marked "no" when asked whether anyone promised him what his sentence would be. Harding indicated that he read and understood all of the information on the form and thereafter signed the Truth-In-Sentencing Guilty Plea Form. The signed Plea Agreement also indicates the range of statutory penalties to which Harding could be sentenced. Furthermore, the following exchange took place during the plea colloquy:

> THE COURT: Do you understand on the rape in the second degree charge you face a sentence up to 20 years in jail and you must serve at least ten years in jail?
> THE DEFENDANT: Yes.
> THE COURT: You have to serve ten years; do you understand that?
> THE DEFENDANT: Yes.
> THE COURT: It can be up to 20. On the charge of attempted robbery in the first degree, do you understand you face a sentence up to --also up to 20 years in jail and you must serve at least two; do you understand that?
> THE DEFENDANT: Yes.
> THE COURT: Do you understand as a result of these two pleas today, if I accept them, you will have to serve at least 12 years in jail, do you understand that?
> THE DEFENDANT: Yes, sir.
> THE COURT: You may serve up to 40 years in jail, that is the maximum exposure. You

have to do twelve, or it could be 40.
THE DEFENDANT: Yes, sir.

It is well established that a "defendant's statements to the Court during the guilty plea colloquy are presumed to be truthful."[6] Further, "[t]hose contemporaneous representations by a defendant pose a 'formidable barrier in any subsequent collateral proceeding.'"[7] Consequently, in the absence of clear and convincing evidence to the contrary, Harding is bound by his statements on the Truth-in-Sentencing Guilty Plea Form and by his sworn testimony prior to my acceptance of the guilty plea.[8] Dunn's representation of Harding was certainly reasonable and Harding has not shown that but for any errors made by Dunn he would not have pled guilty. It is clear that Harding knew that he would have to serve at least 12 years at supervision level V and that he could have to serve up to 40 years at supervision level V. Consequently, I find that Harding's claim is without merit.

B. Prosecutorial Misconduct

Harding next argues that the State also broke its promise not to ask for more than ten years of incarceration if he testified against his co-defendant, Demerris Walker. As noted previously, the statutory minimum mandatory sentence for both offenses is 12 years at supervision level V. In response to Harding's allegations, Adkins states that at no time did he or Dunn, in his presence or

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[6] *State v. Denston*, 2003 WL 22293651, at *5 (Del. Super. Ct.), *citing Bramlett v. A.L. Lockhart*, 876 F.2d 644, 648 (8th Cir. 1989); *Davis v. State*, Del. Supr., No. 157, 1992, Walsh, J. (Dec. 7, 1992) (ORDER).

[7] *Denston*, 2003 WL at *5, *quoting Voytik v. United States*, 778 F.2d 1306, 1308 (8th Cir. 1985) (quoting *Blackledge v. Allison*, 431 U.S. 63, 73 (1977)).

[8] *Denston*, 2003 WL at *5, *citing Fullman v. State*, Del. Supr., No. 268, 1988, Christie, C.J. (Feb. 2, 1988) (ORDER). *See Little v. Allsbrook*, 731 F.2d 238, 239-40, n.2 (4th Cir. 1984); *cf. Patterson v. State*, 684 A.2d 1234, 1238 (Del. 1996).

to his knowledge, indicate to Harding that his possible sentence would be anything other than the range of statutory penalties disclosed on the plea agreement. Moreover, Adkins never represented to Harding that he would receive less than the mandatory minimum or that he would receive no more than ten years for testifying against his co-defendant, Demerris Walker.

There is simply no reason at all to believe that Dunn or Adkins promised Harding that he would receive less than the mandatory minimum period of incarceration. Superior Court Criminal Rule 61(d)(4) provides that "[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified."[9] Thus, I will not address claims that are "conclusory and unsubstantiated."[10] As a result, this claim is summarily dismissed. This conclusion is appropriate given the fact that both Dunn and Adkins have submitted affidavits tending to refute Harding's conclusory and unsubstantiated allegations against them.[11]

CONCLUSION

The defendant's Motion for Postconviction Relief is denied for the reasons stated herein.

IT IS SO ORDERED.

Very truly yours,

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[9]Super. Ct. Cr. R. 61(d)(4).

[10]*State v. Ellison*, 2003 WL 21963010 (Del. Super. Ct.); *See*, e.g., *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

[11]*Ellison*, 2003 WL at *2.

E. Scott Bradley

ESB:tll