

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE) Cr.A.No.: IN01-01-1813R1
)
 v.)
) ID No.: 0011007354
 DEMETRIUS LOAT)

Date Submitted: December 5, 2001

Date Decided: January 11, 2002

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

ORDER

Upon review of Movant Demetrius Loat ("Defendant")'s Motion for Postconviction Relief and the record, it appears to the Court that:

1. Defendant filed a *pro se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 following a guilty plea on July 24, 2001 to one count of Possession Within 1000' of School.

2. In support of his motion, Defendant alleges that he did not receive a preliminary hearing within ten days, there was an unfulfilled plea agreement, and that counsel was ineffective. Defendant fails to provide any substantiation for his allegations.

3. The Delaware Supreme Court has held that in reviewing motions for postconviction relief, this Court must first determine whether a defendant's claims are procedurally barred prior to considering them on their merits.¹ Rule 61(i)(4) provides for summary dismissal by the court "[i]f it plainly appears from the motion... and the record... that the movant is not entitled to relief,

¹*Bailey v. State*, Del. Supr., 588 A.2d 1121, 1127 (1991); *Flamer v. State*, Del. Supr., 585 A.2d 736, 747 (1990).

the judge may enter an order for its summary dismissal...”

This Court will not address Rule 61 claims that are conclusory and unsubstantiated.² Pursuant to Rule 61(a), a motion for postconviction relief must be based on “a sufficient factual and legal basis.” In addition, pursuant to Rule 61(b)(2), “[t]he motion shall specify all the grounds for relief which are available to movant..., and shall be set forth in summary form the facts supporting each of the grounds thus specified.” Defendant has failed to set forth his claims with specificity and supporting facts.

4. This is Defendant’s first motion for postconviction relief and the Court has determined that no procedural bars listed in Rule 61 are applicable. Therefore, the Court may consider the merits of Defendant’s application.

5. Defendant’s first claim for postconviction relief is that he was denied his right to a preliminary hearing. There is no right to a preliminary hearing.³ Defendant pled guilty based on an indictment. “[A]n indictment for a felony [such as in this case] by the Grand Jury eliminates the need for a preliminary hearing.”⁴ For this reason, this claim is without merit.

6. Defendant next claim is that his plea agreement was unfulfilled because he signed the agreement expecting probation with time served, but instead was given two years Level V.

7. This Court has held that in the absence of clear and convincing evidence to the

² See *Younger v State*, Del. Supr., 580 A.2d 552, 555 (1990); *State v. Conlow*, Del. Super., Cr.A. No. IN78-09-0985R1, Herlihy, J. (Oct. 5, 1990) at 5; *State v. Gallo*, Del. Super., Cr.A.No. IN87-03-0589-0594, Gebelein, J. (Sept. 2, 1988) at 10.

³See *Schramm v. State*, Del.Supr., 366 A.2d 1185, 1192 (1976).

⁴*Joy v. Superior Court*, Del.Supr., 298 A.2d 315, 316 (1972).

contrary, a defendant is bound by his signed statement on a guilty plea form.⁵ On the guilty plea form, Defendant was asked whether he had been “promised anything that was not stated” in his written plea agreement. He answered in the negative. Defendant was sentenced to five years at Level V, suspended after two years to three years at Level 3, while the plea agreement allows for a maximum sentence of 36 years. Defendant’s contention of an unfulfilled plea agreement is therefore without merit.

8. In order to prevail on a claim of ineffective assistance of counsel, Defendant must satisfy the two-part test set forth in *Strickland v. Washington*.⁶ Thus, Defendant must first show that his attorney’s conduct fell below that of reasonable professional standards,⁷ and second, that such conduct caused him actual prejudice.⁸

In the context of an ineffective assistance of counsel claim, “a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.”⁹ In the case of a guilty plea, the United States Supreme Court has held that the second prong of the *Strickland* test becomes whether the defendant has shown that “there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going

⁵*State v. Britt*, Del. Super., Cr. A. No. IN92-04-0542R1, Goldstein, J. (Sept. 26, 1995) (ORDER).

⁶466 U.S. 668, 687 (1984).

⁷*Strickland*, 466 U.S. at 687, 688.

⁸*Id.* at 687, 693.

⁹*Walls v. State*, Del. Supr., No. 59, 1995, Holland, J. (Jan. 4, 1996)(ORDER) at 7; citing *Younger*, 580 A.2d at 556.

to trial.”¹⁰

9. Defendant claims that counsel was ineffective because he did not speak up at sentencing regarding the terms of the alleged unfulfilled plea agreement. Defendant’s claim for ineffective assistance of counsel is in actuality a restatement of Defendant’s “unfulfilled plea agreement” claim that has already been addressed by the Court.

10. “It is settled Delaware law that allegations that are entirely conclusory are legally insufficient to prove ineffective assistance of counsel.”¹¹ Because Defendant does not present the Court with any evidence that his counsel’s conduct fell below that of reasonable professional standards or that he was prejudiced as a result of his attorney’s conduct, his claim of ineffective assistance of counsel also must be denied as conclusory.¹²

For the above stated reasons, Defendant’s motion for post-conviction relief is **DENIED.**

IT IS SO ORDERED.

The Honorable Richard S. Gebelein

¹⁰*Hill v. Lockhart*, 474 U.S. 52, 59 (1985). See *Albury v. State*, Del. Supr., 551 A.2d 53, 58 (1988).

¹¹ *State v. Brittingham*, Del. Super., Cr. A. No. IN91-01-1009-R1, Barron, J., (Dec. 29, 1994) (ORDER) at 3 (citing *Younger v. State*, 580 A.2d at 556; *Jordon v. State*, Del. Supr., No. 270, 1994, Walsh, J. (Aug. 25, 1994)(ORDER)).

¹² See *State v. Mason*, Del. Super., Cr. A. No. IN98-02-0279R1, Barron, J. (Apr. 11, 1996)(Mem. Op.); see also *Walls*, No. 59, 1995, (ORDER) at 7.

Orig: Prothonotary
cc: Demetrius Loat - GH