

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

STATE OF DELAWARE)
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)
 v.) I.D. No. 0111014286
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 CHARLES POWELL)
 a/k/a Charles Stoner,)
)
 Defendant.)
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Submitted: December 5, 2002
Decided: January 10, 2003

ORDER

**UPON DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF.
SUMMARILY DISMISSED.**

This 30th day of January, 2003, upon consideration of the Defendant's Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 and the record in this case, it appears that:

(1) On February 21, 2002, Defendant, Charles Powell, a/k/a Charles Stoner, pleaded guilty to Trafficking in Cocaine 50-100 grams, Trafficking in Cocaine 5-50 grams, Conspiracy Second Degree, and Possession with Intent to Deliver a Narcotic Schedule II

Controlled Substance. On the same date, the Court sentenced Defendant to a total of nineteen years Level 5 incarceration, suspended after a total of ten years, for the balance of the sentence on probation. Eight years of Defendant's sentence consists of statutory minimum mandatory terms of incarceration.

(2) Defendant has now filed the above-captioned Motion for Postconviction Relief. In support of his motion, Defendant lists as grounds for relief claims of ineffective assistance of counsel, "tainted evidence," and "deficient probable cause to execute and/or issue search warrant." This is Defendant's first motion for postconviction relief and the Court has determined that none of the procedural bars listed in Rule 61 are applicable. Therefore, the Court may consider the merits of Defendant's motion.

(3) In support of his first ground for relief claiming ineffective assistance of counsel, Defendant alleges that his defense counsel failed investigate the State's case against him and that counsel failed to file a pre-trial motion for suppression of evidence. Defendant argues that, had counsel adequately investigated the charges against him and moved to suppress the drug evidence, counsel would not have advised Defendant to enter a guilty plea.

(4) Generally, by pleading guilty, a defendant waives his right to challenge the sufficiency of the evidence against him and, therefore, Defendant would be deemed to have waived his right to challenge the admissibility of evidence or sufficiency of a search

warrant.¹ However, a defendant's plea of guilty does not waive his right to argue that his decision to enter into the plea was not knowing or voluntary because it was the result of ineffective assistance of counsel.² Specifically, in *Bass*, the defendant also alleged that his defense counsel was ineffective because he failed to investigate the facts of the case and failed to file a motion to suppress.³

(5) Defendant alleges that his defense counsel was ineffective by failing to investigate the State's case against him, prejudicing his defense. Defendant alleges that, "[counsel] did little more than reviewing the record of facts produced by the State." Specifically, Defendant claims that his trial counsel prejudiced his defense by failing to file a motion for suppression of evidence and alleges that, if counsel had done so, there was a strong probability that "this case would have been resolved." Defendant claims that a motion to suppress evidence was warranted because, "[a]s shown in the case history, numerous packages of an off-white chunky substance was confiscated in the search of the movant/defendant's place of residence . . . [h]owever, there was never any identification of any such items being articulated to his ownership." Defendant alleges that, had counsel filed a motion to suppress the cocaine evidence, Defendant's "decision at the advice of his counsel to enter a plea of guilty would have reasonably rendered a different result."

¹ *State v. Jones*, 1990 WL 18267 (1990 Del. Supr.).

² *Bass v. State*, 2002 WL 31796076 (Del. 2002).

³ *Id.* at *1.

(6) A criminal defendant who raises an allegation of ineffective assistance of counsel must show that the attorney's conduct did not meet reasonable professional standards so that such conduct was prejudicial to the defendant.⁴ A defendant must be able to show that "[t]here is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different."⁵ Upon review of the record in Defendant's case and the documents submitted by Defendant in support of his petition, the Court cannot find that Defendant has satisfied either prong of *Strickland*.

(7) The Court has reviewed the transcript of the preliminary hearing in the above-captioned criminal action held on December 18, 2001, specifically the testimony of Senior Corporal Thomas Looney, who conducted the investigation of Defendant as part of his duties with the Wilmington Police. Detective Looney's testimony reveals that defense counsel's choice not to file a motion to suppress the drug evidence seized at Defendant's home was not unreasonable, and that had counsel filed such a motion, it would, in all likelihood, have been denied.

(8) Detective Looney testified, in part, that he was contacted by a past proven reliable informant who told him that Charles Powell had set up a "drug organization." at his residence on West Fourth Street in Wilmington. Police set up two controlled buys where drugs were purchased from Defendant. Police also conducted extensive surveillance

⁴ *Strickland v. Washington*, 466 U.S. 668 (1984).

⁵ *Id.* at 669.

of Defendant's movements before arresting him. When Defendant was arrested after participating in a third controlled buy, he was placed on the ground and put into handcuffs. When police picked Defendant up off the ground, they discovered what was later determined to be 55.3 grams of crack cocaine on the ground beneath him. After arresting Defendant, police executed a search warrant of his residence, where they discovered 68.4 grams of crack cocaine in the hallway, a digital scale in a jacket pocket, and approximately \$1,400 in currency in an upstairs bedroom.

(9) The transcript reveals that Defendant's attorney conducted cross-examination of Detective Looney regarding Defendant's surveillance and arrest and the search of his residence. Defense counsel specifically questioned Detective Looney regarding the issues concerning possession of the drugs and paraphernalia raised by Defendant in this petition. Given the responses to those questions, the Court finds that defense counsel could reasonably have formed the belief that a motion to suppress evidence would have failed. The Court cannot find that counsel's failure to file such a motion, on review of the record, did not meet reasonable professional standards of conduct.

(10) Nor can the Court find that Defendant has shown that the outcome of his case would have been different even if defense counsel had filed, and succeeded, with a motion to suppress the evidence found during the search of Defendant's residence. As summarized above, police had enough evidence obtained through surveillance of Defendant

and numerous controlled buys and from the cocaine found beneath Defendant when he was arrested, to support the charges to which he pleaded guilty.

(11) Defendant's second ground for relief also alleges ineffective assistance of counsel due to his attorney's failure to investigate the case against him and to file a motion for suppression of tainted evidence. In substance, Defendant's second ground for relief is identical to his first. Therefore, the Court finds that Defendant's second ground for relief also is without merit for the same reasons set forth above.

(12) Defendant's third ground for relief, "tainted evidence," and his fourth ground for relief, "deficient probable cause to execute and/or issue search warrant," both seek to challenge the sufficiency of the evidence against him directly, rather than claiming that his plea was involuntary due to ineffective assistance of counsel. As set forth above, by pleading guilty, Defendant gave up the right to challenge that evidence, including the sufficiency of the search warrant. Therefore, Defendant's third and fourth grounds for relief also are without merit.

Therefore, because the Court finds that it is plain from the Motion for Postconviction Relief and the record in this case that Defendant is not entitled to relief, the motion is hereby **SUMMARILY DISMISSED**.

IT IS SO ORDERED.

Carl Goldstein, Judge

oc: Prothonotary
cc: Charles Powell