

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
*JUDGE*

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

January 29, 2009

William L. Purnell  
SBI #  
Sussex Correctional Institution  
P.O. Box 500  
Georgetown, DE 19947

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Eric G. Mooney, P.A.  
11 S. Race Street  
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Department of Justice  
114 E. Market Street  
Georgetown, DE 19947

**RE: State of Delaware v. William L. Purnell**  
**Def. ID #0709038224**  
**Letter Opinion**

Date Submitted: September 4, 2008

Dear Counsel and Mr. Purnell:

This is my decision on William L. Purnell's ("Purnell") motion for postconviction relief. The State of Delaware charged Purnell with Delivery of Marijuana, Maintaining a Vehicle for Keeping Controlled Substances, and Endangering the Welfare of a Child. The charges arose out of Purnell's delivery of marijuana to a man who was the subject of an undercover drug investigation. Purnell pled guilty to Delivery of Marijuana and was sentenced to eight years at Supervision Level V, suspended after serving three years at Supervision Level V for probation. Purnell was represented by James D. Nutter, Esquire ("Nutter").

Purnell raises three claims in his motion for postconviction relief. One, Purnell alleges that Nutter did not represent him properly. Two, Purnell alleges that he is being judged on his "previous

history.” Three, Purnell alleges that he is entitled to “good time” credit pursuant to 11 Del.C. § 4381.

### **I. Ineffective Assistance of Counsel**

Purnell alleges that Nutter (1) did not talk to him enough, and (2) did not prepare for the suppression hearing and trial. In order to prevail on his claim of ineffective assistance of counsel, Purnell must show (1) that Nutter’s actions fell below an objective standard of reasonableness; and (2) there exists a reasonable probability that, but for Nutter’s errors, Purnell would not have pled guilty.<sup>1</sup> Mere allegations of ineffectiveness will not suffice. Purnell must make specific allegations of actual prejudice and substantiate them.<sup>2</sup> Moreover, any review of Nutter’s representation is subject to a strong presumption that his representation of Purnell was professionally reasonable.<sup>3</sup> Nutter filed an affidavit responding to Purnell’s allegations.

#### **1. Consultation**

Purnell claims that Nutter only talked to him once by phone. Nutter’s affidavit states that he met with Purnell during the initial case review, before and after the suppression hearing, at the final case review, and on the morning of the trial. Nutter also stated that he sent Purnell all of the discovery materials and that he spoke with Purnell once by phone and that he tried to contact Purnell several more times by phone, but could not reach him because Purnell’s phone either would not accept any more messages or had been disconnected. I am satisfied that Nutter discussed the case enough times with Purnell. I find no merit to this claim.

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<sup>1</sup>*Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984); *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

<sup>2</sup> *Wright*, 671 A.2d at 1356; *Younger v. State*, 580 A.2d 552, 555-56 (Del. 1990).

<sup>3</sup> *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

## **2. Preparation**

Purnell claims that Nutter was not adequately prepared for the suppression hearing and trial. This was a very simple case. The Delaware State Police were conducting an undercover drug investigation of Harry Swanger. The police had used a confidential informant to purchase drugs from Swanger on several occasions. On the day in question, the police, with the assistance of the confidential informant, arranged to purchase a quarter pound of marijuana from Swanger. Swanger did not have that much marijuana, but made arrangements to get it. Purnell was then seen delivering a package to Swanger's residence. Swanger then called the confidential informant and told him that he now had the marijuana. The police raided Swanger's residence and found a quarter pound of marijuana. Swanger pled guilty to a number of drug-related offenses and was prepared to testify that Purnell delivered the marijuana to him. All of this came out in great detail at the suppression hearing, making Nutter intimately familiar with all of the evidence against Purnell and well-prepared for trial. I find no merit to this claim.

## **II. Previous History**

Purnell alleges that he is being judged by his "previous history." His argument is that the evidence against him was weak and that the only reason the State took such a hard line in plea negotiations was because he had a prior history of dealing drugs. This is no reason to set aside Purnell's guilty plea.

## **III. Good Time Credit**

Purnell argues that he is entitled to good conduct pursuant to 11 Del.C. § 4381. He pled guilty to Delivery of Marijuana. This is an offense for which "good time" credit is not available.<sup>4</sup>

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<sup>4</sup> *Rust v. Kearney*, 2001 WL 1628445 (Del. Super. Sept. 27, 2001); 16 Del.C. § 4751; 11 Del.C. § 4205.

**CONCLUSION**

William L. Purnell's Motion for Postconviction Relief is DENIED.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary's Office