

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

STATE OF DELAWARE,)	
)	
v.)	ID# 0604002667
)	
JOHN S. ROHRER,)	
)	
Defendant.)	

Dated Submitted: September 23, 2010
Date Decided: January 19, 2011

ORDER

**Upon Defendant's Appeal from Commissioner's
Findings of Fact and Recommendation**

FINDINGS OF FACT AND RECOMMENDATION: AFFIRMED

Allison L. Texter, Esq., Deputy Attorney General, Department of Justice, 820 N. French Street, Wilmington, DE 19801, Attorney for the State of Delaware.

John S. Rohrer, *Pro se*.

Jurden, J.

1. On November 20, 2006, Defendant, John S. Rohrer, entered a No Contest plea to one count of Rape Second Degree (as a lesser included offense of Rape First Degree), and two counts of Possession of Child Pornography. Defendant was sentenced to 20 years at Level V, suspended after 15 years, for varying levels of probation, on the Rape Second. Defendant was sentenced to 3 years at level V, suspended after 2 years, for probation on each count of Possession of Child Pornography.

2. On April 21, 2009, Defendant filed a Motion for Post-conviction Relief pursuant to Superior Court Criminal Rule 61.

3. Defendant's Motion for Post-conviction Relief was referred to a Superior Court Commissioner pursuant to 10 *Del. C.* § 512(b) and Superior Court Criminal Rule 62 for proposed Findings of Fact and Recommendation. The Commissioner issued his Findings of Fact and Recommendation on May 3, 2010.¹ The Commissioner's Findings of Fact and Recommendation sets forth the procedural history, Defendant's asserted grounds for Rule 61 relief, and an analysis of the relevant facts and law. The Commissioner recommended that Defendant's Motion for Post-conviction Relief be denied.

4. On May 25, 2010, the Court affirmed the Commissioner's Recommendation and denied Defendant's Motion for Post-conviction Relief.

5. On June 1, 2010, Defendant filed a Motion for Enlargement of Time to File an Appeal of Commissioner's Findings of Fact and Recommendation. On June 12, 2010, the Court vacated its May 25, 2010 Order and granted Defendant's Motion for an Enlargement of Time to File an Appeal to the Commissioner's Recommendation. On

¹ D.I. 30.

September 23, 2010, Defendant filed an Appeal of Commissioner's Findings of Fact and Recommendation.²

6. Following *de novo* review of Commissioner's Findings of Fact and Recommendation, the Court finds the substantive and procedural arguments were considered and thoroughly addressed by the Commissioner and, therefore, the Commissioner's Recommendation is affirmed.

7. Defendant claims that he was suffering from mental health problems and was on anti-psychotic medication at the time he accepted the plea. Defendant now seeks to withdraw his plea, claiming it was not knowing and voluntary.

8. The Court is satisfied that Defendant's plea was knowing and voluntary. Before the Plea Colloquy, Defendant carefully reviewed the Truth in Sentencing Form and the Plea with his attorney.³ Defendant read each question, understood each question, and answered each question truthfully.⁴ He consulted with his attorney about the ramifications of entering the plea.⁵ When asked by the Court if he had any questions, he responded, "No ma'am."⁶ When asked by the Court whether he was under the influence of any drugs or alcohol, Defendant answered, "No, ma'am."⁷ When asked by the Court whether he had freely and voluntarily decided to plead No Contest to the three charges, Defendant answered, "Yes, ma'am."⁸ When asked by the Court whether his attorney, the

² D.I. 35.

³ Plea Hearing Transcript at 4 (Nov. 20, 2006) (D.I. 21).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 6.

⁸ *Id.*

State, or anyone threatened or forced him into the plea, Defendant answered, “Absolutely not.”⁹

9. To withdraw a guilty plea after sentence has been imposed, a movant must show that his plea was either not voluntarily entered or that it was entered because of misapprehension or mistake as to his legal options.¹⁰ The decision whether to grant the motion is within the trial court’s discretion.¹¹ Defendant’s answers at the Plea Colloquy established that he knowingly and voluntarily entered the plea.

The Commissioner’s Findings of Fact and Recommendation that Defendant’s Motion for Post-conviction Relief be denied is hereby **AFFIRMED**. Defendant’s Motion for Post-conviction Relief is **DENIED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

⁹ *Id.* at 7.

¹⁰ *Albury v. State*, 551 A.2d 53, 58 (Del. 1985).

¹¹ *Id.*