

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY
COURTHOUSE
GEORGETOWN, DE 19947

February 5, 2008

Laraine A. Ryan, Esquire
1601 Milltown Rd., Ste. 8
P.O. Box 5733
Wilmington, DE 19808

RE: State of Delaware v. Michael Silochan, Def. ID# 92S03103DI

DATE SUBMITTED: January 22, 2008

Dear Ms. Ryan:

Pending before the Court is a motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61") which you filed on behalf of Michael Silochan ("Silochan"). This is my decision denying the motion.

The file in this matter shows the following.

The affidavit of probable cause recites the events which led to Silochan's arrest. In May, 1991, the Delaware State Police Special Investigations Unit was conducting an undercover drug operation. James Peterson ("Peterson") waved down two officers. The officers agreed to pay \$25.00 for a piece of crack cocaine. Peterson ran to Silochan, obtained the crack, came back to the officers, exchanged the crack for the money, and took the money back to Silochan.

A warrant for Silochan's arrest on charges of delivery of a narcotic schedule II controlled substance and conspiracy in the second degree was issued on October 11, 1991. Silochan was

picked up approximately nine months later, on or about July 12, 1992. An information dated August 10, 1992, was filed charging Silochan with delivery of cocaine and conspiracy in the second degree.

Conflict counsel represented Silochan. On October 9, 1992, Silochan entered into a guilty plea to a charge of delivery of cocaine.¹ The State of Delaware (“the State”) nolle prossed the conspiracy charge. On that date, the Court sentenced Silochan to pay costs and assessments and to serve one year at Level 5, suspended for 15 months of probation at Level 2. On January 7, 1994, Silochan was placed on probation pursuant to 11 Del. C. § 4101 until he paid the monies due the Court. He never paid the Court in full. By order dated September 28, 2004, this Court deemed the monetary obligations to be uncollectible, ordered the case be closed, and instructed the file be sent to archives.

On January 22, 2008, the pending motion was filed. Therein, Silochan represents he previously did not file a motion for postconviction relief because he was not under deportation proceedings until August 8, 2007. He argues trial counsel was ineffective because she did not inform him that he might be deported due to the conviction.² He also argues his rights were

¹The Court will not have the plea colloquy transcribed in light of its decision in this matter.

²The risk of deportation is a collateral consequence of a guilty plea. Christie v. State, Del. Supr., No. 252, 1994, Walsh, J. (Dec. 29, 1994). Accord Barkley v. State, 724 A.2d 558, 560 (Del. 1999). The Truth-in-Sentencing (“TIS”) Guilty Plea form that was in use at the time Silochan entered his plea did not contain the statement which the current TIS Guilty Plea form contains wherein a defendant is advised that conviction of an offense may result in “deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.” State v. Modi, Del. Super., Def. ID# 9508011619, Alford, J. (Sept. 25, 1998) at 3. Because the Court will not have the plea colloquy transcribed in this case, the Court will make two assumptions, but only for the purpose of deciding this motion. It will assume, without deciding and without making a ruling that might be *res judicata*, that no one said anything on the

otherwise violated and lists the following claims: illegal detention and arrest, violation of the right to a speedy trial, denial of the right to confront witnesses, and denial of the right to testify.

Rule 61 is not available to Silochan as a means of obtaining relief in this matter. As clearly is set forth in Superior Court Criminal Rule 61(a):

This rule governs the procedure on an application by a person in custody or subject to future custody under a sentence of this court seeking to set aside a judgment of conviction ... on the ground that the court lacked jurisdiction or on any other ground that is a sufficient factual and legal basis for a collateral attack upon a criminal conviction....

Defendant is not in custody or subject to future custody under a sentence of this court.

Thus, the language of Rule 61(a) creates a standing bar to postconviction relief pursuant to Rule 61 for persons such as Silochan who have completed their sentences. Epperson v. State, 829 A.2d 935 (Del. 2003); Summers v. State, 818 A.2d 971 (Del. 2003); Petsinger v. State, 805 A.2d 903 (Del. 2002); State v. Lewis, 797 A.2d 1198, 1201 (Del. 2002); Fullman v. State, 746 A.2d 276 (Del. 2000); Guinn v. State, 625 A.2d 279 (Del. 1993); State v. Pumphrey, Del. Super., Def. ID# 00020114519, Bradley, J. (Oct. 17, 2006), aff'd, Del. Supr., No. 580, 2006, Berger, J. (Oct. 23, 2007); State v. Hall, Del. Super., Def. ID# 92S02580DI, Stokes, J. (July 26, 2006); State v. Hinson, Del. Super., Del. Super., Def. ID# 9804020279, Cooch, R.J. (Feb. 10, 2006).

Furthermore, the ruling regarding the applicability of Gural v. State, 251 A.2d 344, 344-45 (Del. 1969) which this Court previously reached in State v. Hall, supra, applies here. That

record about defendant being deported. It also will assume, without deciding and without making a factual ruling that might be *res judicata*, that trial counsel did not discuss the possibility of deportation with Silochan. The trial court “is not required *sua sponte* to advise a defendant of the risk of deportation.” State v. Christie, 655 A.2d 836, 838 (Del. Super. 1994), aff'd, Christie v. State, supra. Trial counsel was not ineffective for not advising defendant of this possible consequence. Id. at 841.

ruling, contained at page 7 of State v. Hall, *supra*, is:

The question the Court has considered is whether defendant may invoke the collateral consequences rule the Supreme Court adopted in Gural v. State, 251 A.2d 344, 344-45 (Del. 1969). That rule is:

[T]he satisfaction of the sentence renders the case moot unless, in consequence of the conviction or sentence, the defendant suffers collateral legal disabilities or burdens; in which event the defendant is considered to have a sufficient stake in the conviction or sentence to survive the satisfaction of the sentence and to permit him to obtain a review or institute a challenge.

Gural v. State, 251 A.2d at 344-45. The Supreme Court clarified in State v. Lewis, 797 A.2d 1198, 1201 (Del. 2002), that this collateral consequences rule applies only to Rule 35(b); it is not applicable in a situation where Rule 61 would have applied.

The language of Rule 61 is clear and the case law has held overwhelmingly that a person in Silochan's situation has no basis for collaterally attacking his conviction. Thus, the motion is denied.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
Department of Justice