

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

STATE OF DELAWARE,)	
)	
v.)	ID#: 0107015235
)	
HUEY TIMMONS,)	
)	
Defendant.)	

Submitted: October 15, 2002

Decided: January 23, 2003

Upon Defendant's Motion for Postconviction Relief - ***DENIED***

ORDER

On November 19, 2002, Defendant, Huey Timmons filed a motion for postconviction relief, challenging the sentence imposed on September 20, 2002, and the entry of his guilty plea on June 12, 2002. In summary, Timmons alleges four grounds for postconviction relief:

- Timmons was sentenced outside of the Truth-In-Sentencing Guidelines;
- Timmons' guilty plea was coerced because the prosecutor and defense counsel led him to believe he would be sentenced within the TIS Guidelines;
- Timmons' original plea agreement "carried a sentence of 0-15 months for Robbery 2d," and the sentence exceeded the alleged agreement;

- Timmons received ineffective assistance of counsel for various reasons, mostly concerning alleged deficiencies leading up to the entry of his guilty plea.

The court has given Timmons' motion preliminary consideration under Superior Court Criminal Rule 61(d). Consistent with Rule 61(d)(3), the court ordered a transcript of the guilty plea colloquy. Having reviewed the record, including the Plea Agreement, TIS guilty plea form, and the transcript, the motion is subject to summary dismissal under Rule 61(d)(4). It plainly appears that Timmons is not entitled to relief.

As to Timmons' first two claims, his sentence for Robbery in the second degree is five years in prison, which exceeds the TIS Guidelines' recommended maximum prison sentence of fifteen months. Without elaboration, Timmons argues first that the sentence exceeds the "statute of limitations for such offenses. . . ." Timmons committed the robbery on June 18, 2001. He was indicted on October 22, 2001. He pleaded guilty, as mentioned, on June 12, 2002. And as also mentioned, he was sentenced on September 20, 2002. Thus, all of the proceedings occurred well within the applicable statute of limitations.¹

¹ *Del. Code Ann. tit. 11, §205 (2001).*

If Timmons' reference to the statute of limitations means the TIS Guidelines, the guidelines are not a "statute of limitation" in any sense. They are guidelines, which was explained to Timmons when he pleaded guilty. The sentence he received, five years in prison, was half the maximum sentence he could have received. Thus, his sentence exceeded the TIS Guidelines, but fell far short of the statutory maximum.

The court will assume that before Timmons pleaded guilty, the prosecutor and defense counsel encouraged Timmons in the belief that he would receive no more than fifteen months in prison. There is evidentiary support for that claim because the TIS guilty plea form signed by Timmons shows that he answered "Yes" to the question: "Has anyone promised you what your sentence will be?" Nevertheless, Timmons' plea agreement leaves the "Sentence Recommendation/Agreement" portion blank. The "PSI" box is checked, meaning, as the court explained to Timmons, that sentencing would occur after a presentence investigation. Most importantly, after he repeatedly admitted committing the robbery, the court asked Timmons: "Have any threats or promises been made to you in order for you to enter this plea?" Timmons responded, "No, sir." More importantly, during the plea colloquy the court examined Timmons about his understanding of the possible sentence and the plea agreement:

THE COURT: The charge of robbery carries a penalty up to five years in prison and so does the disguise charge, so you are facing a total of ten years in prison. The Sentencing Guidelines recommend up to fifteen months in prison for robbery and probation for the other charge. The State has not said what it is going to recommend. Are you with me so far?

THE DEFENDANT: Yes, sir.

THE COURT: When you are sentenced, which is going to happen after a presentence investigation the Court will not be bound by the Guidelines and the Court will not be bound by the State's recommendation. You could receive anything from probation up to ten years in prison. Do you understand and follow that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that once this plea is entered in just a few moments from now, from then on it is almost impossible for you to back out of it?

THE DEFENDANT: Yes, sir.

So, it appears from the record that Timmons's Plea Agreement contains no promises about the sentence and Timmons was told directly by the court that the court would not be bound by the Sentencing Guidelines. If Timmons were confused or if he felt that he had been misled, he had the opportunity to ask the court about it.

Because Timmons did not assert the ground for relief during the proceedings leading to the judgment of conviction, i.e. the plea colloquy, he was obliged to show cause for relief from the procedural default, under Superior Court

Criminal Rule 61(i)(3), which he has not done. Nor has Timmons shown prejudice from violation of his rights.

The court appreciates that Timmons was convicted by his guilty plea. But he admitted that he is guilty and he has not attempted to demonstrate that he would have been acquitted had he gone to trial. Moreover, by pleading guilty he avoided prosecution for two other robberies. That leaves open the probability that Timmons received considerable benefit by pleading guilty. That, despite the significant prison sentence his guilty plea precipitated.

The court already has addressed Defendant Timmons' third ground for postconviction relief. Timmons' Plea Agreement is silent as to Timmons' likely sentence. And the court specifically discussed the possible sentence with Timmons.

Finally, Timmons' claims of ineffective assistance of counsel are not procedurally barred. Nevertheless, they are entirely conclusory. At that, Timmons has made no effort to meet the two-prong test for an ineffective assistance of counsel claim: failure to meet minimum professional standards and prejudice. Again, the court emphasizes Timmons' failure to show actual prejudice resulting from his guilty plea. Timmons has made no attempt to demonstrate that had he not pleaded guilty, he would have fared better. To the contrary, taking his admissions of guilt and his failure to allege short-comings in the State's case into account, it is likely that

Timmons's guilty plea was prudent. What Timmons' motion boils down to is Timmons's disappointment over the sentence he received.

The court knows that the guilty plea colloquy was less than perfect. It would have been better if the court had fly-specked the TIS Guilty Plea Form and made an inquiry as to why Timmons checked the "Yes" answer to the question about whether anyone had promised what his sentence would be. But taken as a whole and as discussed above, there certainly is no basis to re-sentence defendant². Otherwise, Timmons has not asked to withdraw his guilty plea and face trial on all charges. Timmons, therefore, has reason to be disappointed about his prison sentence, but he is not entitled to postconviction relief.

For the foregoing reasons, the motion for postconviction relief is summarily **DENIED**. The Prothonotary shall notify movant of this decision.

IT IS SO ORDERED.

Date

Judge

oc: Prothonotary (Criminal Division)
pc: Paul R. Wallace, Deputy Attorney General
Todd Conner, Esquire

² *Manis v. State*, 2001 WL 1006241 (Del. Supr.)

