

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

ANTHONY VALENTINE

Defendant

) CRIMINAL ACTION NUMBER

)

) IN-06-04-2090-R1 IN-06-04-2091-R1

) IN-06-04-2092-R1 IN-06-04-2093-R1

) IN-06-04-2094-R1 IN-06-04-2095-R1

) IN-06-04-2096-R1

)

) ID NO. 0604010492

Submitted: October 20, 2010

Decided: January 31, 2011

MEMORANDUM OPINION

*Upon Motion of the Defendant for Postconviction Relief - **DENIED***

HERLIHY, Judge

Defendant Anthony Valentine has moved for postconviction relief arising out of convictions of two counts of robbery first degree, one count of possession of a deadly weapon during the commission of a felony, conspiracy second degree, assault second degree and possession of a deadly weapon by a person prohibited (“PDWBPP”).¹

Valentine’s convictions were upheld on appeal.² The mandate was issued August 25, 2009. Valentine filed his motion on August 3, 2010. The Court sent his motion to trial counsel.³ The Court forwarded counsel’s response to Valentine for his reply and he did so.⁴ The motion makes these basic claims: (1) his rights under *Miranda v. Arizona*⁵ were violated when the police failed to inform him of those rights when he was arrested and (2) counsel was ineffective for (a) failure to meet with him to properly prepare a case, (b) failure to properly translate or interpret into Spanish concerning the applicable principles of law, and (c) failure to determine and/or interview witnesses who would have been helpful to the case.

Factual Background

This case has some unusual history. Valentine was originally indicted for two

¹ The latter charge was a result of a bench trial after the jury returned its guilty verdict on all of the other charges.

² *Valentine v. State*, 977 A.2d 899 (Del. 2009).

³ Super. Ct. Cr. R. 61(g)(2).

⁴ Super. Ct. Cr. R. 61(g)(3).

⁵ 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966).

separate robberies. Both were in the same indictment. One robbery involved a store - the Franklin Market and a clerk inside - at 2nd and Franklin Streets in Wilmington. The Franklin Market robbery was covered in Counts 1-3. The other robbery was at Avila's Bakery on Lancaster Avenue, also in the City. That robbery involved two victims and is charged, along with related offenses in Counts 4-9. Javier Torres was a co-defendant on Counts 1-9. Count 10, which was severed at trial, charged PDWBPP.

On October 25, 2006, on the date set for the trial of all of these charges, Valentine pled guilty to conspiracy second degree in relation to the Franklin Market robbery and to robbery first degree, assault second degree and possession of a deadly weapon during the commission of a felony. These three charges related to the Avila's Bakery robbery. A pre-sentence investigation was ordered.

On December 8, 2006, before he was sentenced, he filed *pro se* motion to withdraw his guilty pleas. The grounds were that his counsel was ineffective for not giving him copies of the police reports and Superior Court Criminal Rule 16 discovery. He claimed an inability to understand. On January 22, 2007, the judge who took his pleas, Judge Babiarz, denied the motion because Valentine had not shown he would have gone to trial instead of entering a plea. Judge Babiarz postponed sentencing and allowed Valentine to submit an amended motion.

Next, however, Valentine *pro se* filed a discovery motion for all videotapes and sound recordings. There is no record of what happened to this motion. On April 23,

2007, Valentine filed another *pro se* motion to withdraw his pleas. The grounds were his alleged inability to understand English.⁶ He asserted that if he had been able to view the evidence it would have revealed exculpatory evidence. He says he pled to a misdemeanor out of his inability to understand English and did not understand the plea agreement. There was a conclusory claim of ineffective assistance of counsel.

On May 8, 2008, Judge Babiarz denied the second motion. He noted Valentine had a (AOC) certified interpreter during the plea offer with his attorney and that he was satisfied with her representation. Judge Babiarz found no fair and just reason to allow the plea to be withdrawn.

Valentine's case was placed on Judge Babiarz's sentencing calendar. The record at this point is incomplete, but for reasons not appearing in the record, Judge Babiarz allowed Valentine to withdraw his pleas. New counsel entered the case.

The case went to trial on December 2, 2008 on all charges. The Court will not dwell on the details of the Franklin Market robbery as the jury was hung on Counts 1-3 relating to that event. The victim of that robbery was unable to identify the man who put an arm around her neck and held a knife to her throat. The robber was a stranger to her. Neither a store surveillance VHS nor a Downtown Visions DVD showing events outside the Market clearly showed Valentine. It did confirm the victim testimony that a second

⁶ There was an interpreter for Valentine at the time of his plea. He also signed a Spanish language Guilty Plea form.

person was outside the store door as a lookout and blocking potential customers from coming in.⁷

The Franklin Market incident was on April 10, 2006. The Avila's Bakery incident was on April 12, 2006. Around 2:30 p.m. on April 12th, two men came into the Bakery. Isabella Longinos was working behind the counter, and testified at trial. Since she was from Mexico and been in the United States for only five years, an interpreter was also provided to her. One of the men put his hand on the counter in front of her. After a few minutes the same man came around the counter, put one arm around her waist and a knife to her ribs. He demanded she open the register. Longinos gave him money. The robber escorted her towards the back of the store, and while going in that direction an alarm went off. At one point, she and he fell. Her attacker ran around inside the store before he left. She ran into a bathroom, locked the door, noticed she was bleeding from her finger, and wrapped it up.

Longinos identified Valentine in court as the person who grabbed her, held the knife to her and chased her. She identified him from a photo line-up one day after the robbery. She also said he was the one who had placed his hand on the counter before he came around it and grabbed her. The police recovered a usable latent print from the counter top. Comparison showed it was Valentine's. In addition, one of the investigating officer's

⁷ Co-defendant Torres, however, testified that he robbed the Franklin Market with Valentine. Valentine was the lookout.

viewed the Bakery's DVD of the events, which showed the robbery, and recognized Valentine, whom he knew as "Anthony."

Magdalena Quintarra, an assistant manager at the Bakery, testified. She testified in Spanish as being from Mexico. She was working in the back of the Bakery when she heard Longinos scream. She noticed in a mirror that there were two men in the front of the store. Longinos' scream concerned her so she went to the back of the store and set off the alarm. When she turned, she saw one man and Longinos on the floor; another man was running toward her. When she was fleeing out the back door, that man threw something toward her but it hit a metal object in the kitchen.

The co-defendant, Javier Torres, who had struck a plea bargain, testified. He said they went into the Bakery together, planning to rob it. He saw Valentine grab Longinos and hold a knife to her demanding money. He says he fled when Longinos broke free. Later he went to Valentine's house to get his share of the robbery proceeds.

Detective Danny Silva of the Wilmington Police was one of the investigating officers of the bakery robbery. He was the one who recognized Valentine in the Bakery DVD. He went to Valentine's house, just a few blocks from the Bakery, on April 13th arrest him. Valentine resisted arrest and had to be "tasered." Valentine was taken to a hospital where Detective Silva later spoke to him in Spanish. He gave Valentine his "Miranda"⁸ rights in Spanish. Earlier in the trial, defense counsel had indicated there

⁸ *Miranda v. Arizona, supra.*

were no “Miranda” issues, but on cross-examination, she did bring out there was no signed waiver form and no recording of the interview. When told he was being questioned about the Franklin Market and Avila’s Bakery robberies, Valentine related that he was an addict and did the robberies to please Torres. Valentine said Torres practices voodoo and has him under his control. That “control” made him hurt (Longinos) though he did not mean to. Valentine said he needed more money for drugs.⁹ Valentine did not testify.

After the jury indicated it was deadlocked on Counts 1-3 relating to the Franklin Market robbery but returned a verdict of guilt on Counts 4-9 relating to the Avila’s Bakery robbery, the Court held a bench trial on Count 10, possession of a deadly weapon by a person prohibited (PDWBPP). It had been severed prior to trial, and Valentine had waived a jury trial on that single charge. The date of the offense was April 12th, the date of the Bakery robbery. After additional evidence was presented, the Court convicted Valentine of that offense.

Valentine was sentenced on February 6, 2009 on Counts 4-10. On that same date, the State entered a *nolle prosequi* on Counts 1-3.

On appeal, trial/appellate counsel indicated to the Delaware Supreme Court that there was no arguable appellate issues. After being so notified also, Valentine offered none to the Supreme Court. His convictions were affirmed.¹⁰

⁹ The Court *sua sponte* gave a cautionary instruction at this point.

¹⁰ *Valentine v. State, supra.*

Valentine's Contentions

As noted in the beginning, Valentine raises a *Miranda* issue as ground one for relief. He seems to assert that he was not given his "Miranda" rights. Also, he claims he may have been under the influence of marijuana laced with PCP and not fully cognizant when he spoke to Det. Silva at the hospital. Further, he remarks he may still have been suffering the effects of being "tasered." Valentine claims he mentioned these facts to trial counsel. He seems to argue that there needed to be a judicial determination of whether his confession was involuntary. He makes other difficult to comprehend allegations involving one of the investigators, Detective Patricia Conner.

In this first ground, Valentine mentions that he has a history of mental health issues. The record reveals his first defense counsel obtained a psycho-forensic evaluation form within the Public Defender's Office. It mentions a prior examination for treatment purposes at the Delaware Psychiatric Center. There is no indication there was a competency issue at the time of the offense or trial.

Trial counsel responded to the allegations in ground one. She denies not conducting a pretrial investigation or not interviewing possible witnesses. She indicates that she and Valentine discussed the drugs and voodoo statements Detective Silva attributed to him. She states Valentine, after talking with her, chose not to take the stand. Under this ground - though more properly under ground two - she concurs with him that she did not file a pre-trial motion to suppress. However, she points out a hearing occurred during the trial

on the voluntariness of Valentine's statement to Detective Silva and that the Court ruled it voluntary.

Valentine's reply to trial counsel is that she should have filed a pretrial motion to suppress. He identifies his mother as present at his house when he was arrested. He still maintains he was never "Mirandized." His focus remains on the events of April 13th, when he was arrested.

The second ground for postconviction relief is ineffective assistance of counsel. Valentine claims trial counsel did not consult with him to prepare the case. He also says she did not properly translate applicable principles of law into Spanish. Finally, he asserts she did not interview witnesses helpful to the defense.

More particularly, Valentine complains that trial counsel never came to Gander Hill to discuss his case. He says she never developed a coherent defense. He complains that a neighbor who was present when he was arrested was not subpoenaed, though he does not identify the neighbor or what the neighbor would say. Valentine complains he told trial counsel he never confessed to the Avila's Bakery robbery. She should have moved to suppress it, he asserts.

Valentine claims trial counsel "convinced" him to have a separate trial on the PDWBPP charge. His argument appears to be such a charge amounts to double jeopardy since he had already been convicted of the underlying felony for this offense (burglary second degree).

In addition, Valentine says trial counsel:

1. did not review the indictment with him;
2. review or explain the elements of the offenses;
3. review the State's discovery materials also claiming that before he was *arrested*;

he should have been "*Mirandized*;"

4. did not thoroughly inquire into his version of the events; and
5. did not inquire into any witnesses the defendant may have had.

Trial counsel denies that she failed to meet with Valentine or interview witnesses. She cannot respond to the claim about inadequate translation. She notes she moved to sever the PDWBPP charge which the Court granted. Of course, with his consent¹¹ the bench trial was conducted. She was prepared, contrary to his allegation, to proceed with that charge.

Valentine's response to counsel's reply is that he went to trial with little understanding of the laws and procedures in his case. This, he claims, was exacerbated by bad translation into Spanish. He further contends she failed to produce mitigating evidence on the PDWBPP charge. He adds a new claim that trial counsel did not have his mental state investigated for sentencing purposes. He says she was aware pre-trial of his mental health history.

¹¹ The Court conducted a thorough inquiry into Valentine's choice to waive jury trial.

Discussion

Before undertaking a review of the issues Valentine raises in his motion, the Court must first determine if there are any procedural bars to doing so.¹² Valentine filed his motion within one year of the mandate's issuance, so there is no time bar.¹³ Claims of ineffective assistance of counsel are usually not heard on direct appeal.¹⁴ There is, however, one procedural bar to several of Valentine's claims. When notified on direct appeal that his trial/appellate counsel found no appealable grounds he offered none of his own. He could, but did not raise the issue of the involuntariness of his statement to Det. Silva. This Court ruled the statement was voluntary, and Valentine did not claim the Court erred in that ruling. As part of that ruling, the Court found, perhaps implicitly, that Det. Silva *had* advised Valentine of his *Miranda* rights.

In short, the voluntariness of his confession was an issue he could have raised on direct appeal but did not.¹⁵ His claim about *Miranda* and voluntariness is barred.¹⁶ There

¹² *Stone v. State*, 690 A.2d 924 (Del. 1996).

¹³ Super. Ct. Cr. R. 61(i)(1).

¹⁴ *Tatum v. State*, 941 A.2d 1009, 1010 (Del. 2007).

¹⁵ The Court has explicitly considered that Valentine had an interpreter during his initial plea and at trial and may have difficulty in understanding or communicating in English. Further the various filings from "Valentine" are in English but appear to be in two, if not three different handwriting styles. He may not have written them but is the driving force behind them. In other words, Valentine is quite capable of getting others to write in English for him in detail and cites *many* cases.

¹⁶ Super. Ct. Cr. R. 61(i)(3).

is relief from this bar, but neither of the grounds for that relief is applicable or warrant reconsideration in the interest of justice.¹⁷

This bar, or course, does not apply to Valentine's claim that trial counsel was ineffective. To prevail on such a claim, Valentine must show: (1) counsel's representation fell below some objective standard of reasonableness and (2) but for counsel's errors, the outcome of this trial would have been different.¹⁸

Valentine cannot satisfy either of these requirements:

1. On his claim counsel should have filed a pre-trial motion to suppress his statement to Det. Silva:
 - a. counsel made a "speaking" motion at trial;
 - b. after a hearing outside the presence of the jury, that motion was denied;
 - c. therefore, if counsel had filed a pre-trial motion, the result would have been the same. There can be no counsel error and, therefore, there can be no ineffectiveness;
 - d. Valentine seems to be operating under a complete misapprehension of when *Miranda v. Arizona* is applicable. He says the police were required to "*Mirandize*" him prior to his arrest. This "timing" claim is made several times in his papers. That is not what *Miranda* requires the police to do.

¹⁷ Super. Ct. Cr. R. 61(i)(5).

¹⁸ *Shockley v. State*, 565 A.2d 1373, 1376 (Del. 1989).

2. On counsel's failure to interview witnesses:
 - a. the only witness Valentine names is his mother and that would be in connection with his arrest. But he offers nothing about how she may have helped the defense;
 - b. Valentine *names* no other witnesses names or what they may say.
3. On counsel's failure to develop a defense:
 - a. a co-defendant testified against him, but on one set of robbery charges that testimony did not result in a conviction. Those charges were eventually *nol prossed*.
 - b. regarding the Avila Bakery robbery:
 - (1) his fingerprint was found a spot on a counter where a witness said he had touched it, and where the surveillance DVD showed he had touched it;
 - (2) the victim identified him in a photo - array the next day and at trial;
 - (3) Det. Silva who knew Valentine from before recognized him in the Bakery surveillance video;
 - (4) his co-defendant, Torres, described the robbery and Valentine's role which the victim's testimony and the surveillance DVD corroborated;
 - (5) all of this was supported by his confession to Det. Silva.

- c. other than challenging the confession, which trial counsel did, what strategy does Valentine offer or propose? The trial was two years ago and even now, he offers none.
4. On counsel's failure to investigate or inquire into his version of the events, Valentine has yet to get specific. In light of the evidence against him, this claim rings hollow. He mentions a neighbor but does not offer what this neighbor would have said.
 5. On his claim that counsel failed to read the indictment to him, which counsel denies, he fails to show how this would have led him to either be found not guilty or change his mind and re-enter a plea. In light of the history of this case, this claim, too, rings hollow. Similarly, counsel's alleged failure to tell him of the elements of the offenses suffers from the same infirmities as his indictment claim.
 6. Even though he now knows all of the evidence against him, Valentine fails to provide specifics about how seeing the police report(s) - to which he is not entitled, save for any statements he or his co-defendant made - would have changed anything.
 7. Valentine claims trial counsel did not interpret correctly. She, of course, said she was not his interpreter. The interpreter was Jorge Jenkins. He is well known to this judge and to other members of the Court. He is AOC certified,

- has interpreted for Spanish speaking defendants in hearings, plea colloquies, and trial for a number of years. He is regarded as one of the best. This claim is, therefore, viewed as a sham.
8. Valentine raises a question about the bench trial for the PDWBPP charge. He forgets trial counsel moved to sever it, the Court offered the option of a separate jury trial later or a bench trial once the jury returned its verdict, and that he waived a jury trial on that charge. He makes no coherent claim that he would have selected a later jury trial. This claim lacks merit.
 9. Valentine alleges trial counsel failed to develop “mitigating evidence” for the PDWBPP charge. One, he does not say what it is, and two, he fails to realize there is no such thing.
 10. Trial counsel, he says, failed to utilize his mental health history. The record shows he had a DPC admission to determine treatment, not competency. The Public Defender’s Office which represented him for the plea and during the trial, albeit by different counsel, had a psycho-forensic exam done in early 2007. It showed some drug abuse history (in part abuse of PCP which came out at trial) and some mental health problems.

Valentine also accuses trial counsel of not using that history as mitigating evidence at sentencing. Yet the record reveals:

Trial Counsel: Thank you, your Honor. Let the record reflect that Mr. Jenkins is sitting at counsel table with Mr. Valentine to interpret for him from English to Spanish and for the Court back to English.

Your Honor heard the trial of Mr. Valentine.

He was found guilty of two counts of Robbery One, two counts of a Weapon, which was a knife, and, the Conspiracy, and then the Person-prohibited charge, and the Assault, Second.

Your Honor the minimum/mandatory time here is nine years, or ten years, I'm sorry, three on each of the robberies and two for each of the weapon's charges.

The Court has in front of it the psycho-forensic summary prepared by Ms. Stanish, of my office. And it appears that for some reason Mr. Valentine informed the Presentence Office that he had completed the 12th grade; he has informed Ms. Stanish, consistently, that he dropped out of school at age 13.

There is a history of mental-health issues.

When the Delaware Psychiatric Center performed an evaluation of Mr. Valentine, February of '06, he was diagnosed with a Psychotic Disorder, but Doctor Donahue, of DPC couldn't figure out if that was a result of schizophrenia or of drug use.

Mr. Valentine was found competent to stand trial back then, and he appeared able to assist me at the time of his trial in this case.

He was also admitted to Meadowood (sic) in October of '05, which was about six months before the events in question; that emergency admission became a civil commitment.

His family informed Ms. Stanish that there is, there is some history of mental-health issues in the family.

I think that while Mr. Valentine is at Level V, the Court should order him to complete a mental-health evaluation and follow any treatment to recommendations of the Mental Health Unit at DCC, or wherever he is

housed, and order him to take whatever medication is prescribed.

I would also ask the Court to require Mr. Valentine to complete Key or Greentree or such other substance-abuse program as is available to him at whatever DOC location he is housed, and that he obtain his GED, and takes parenting classes and the Life-Skills Program, because, Your Honor, he is 27 years old and according to the Presentence Report, was relying on the equivalent on an allowance from his father, and has never been self-sufficient, which probably leads to his drug use, which obviously, lead to the events in question, and somewhere perhaps Mr. Valentine needs a little bit of assistance in breaking that cycle.

I'd ask the Court to impose no more than the minimum/mandatory.

He is 27 and-a-half years old, he has been held on these charges since April 14 of 2006.

Thank you.¹⁹

Valentine cannot meet his burden of showing either counsel error that if there were how the probable outcome of this trial on the charges for which he was convicted would have been different. For the reasons, his claims of ineffective assistance of counsel lacks merit.

Conclusion

For the reasons stated herein, defendant Anthony Valentine's motion for postconviction relief is **DENIED**.

IT IS SO ORDERED.

J.

¹⁹ Sentencing hearing transcript, February 6, 2009, pp. 2-4.