

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

(FILED: DECEMBER 10, 2012)

AMADEU SANTOS

:

v.

:

C.A. No. KM 12-0743

:

STATE OF RHODE ISLAND

:

:

DECISION

RUBINE, J. This matter is before this Court on Amadeu Santos’ Application for Post-Conviction Relief pursuant to G.L. (1956) § 10-9.1-1, filed on June 22, 2012, in Kent County Superior Court.

I

FACTS AND TRAVEL

The substantive facts of this case are gleaned from State of Rhode Island v. Amadeu Santos, K1-96-385A. On August 1, 1996 the Kent County Grand Jury indicted Amadeu Santos (“Santos” or “Petitioner”) on three counts of Second degree sexual assault by force or coercion in violation of G.L. §§ 11-37-4 and 11-37-5, stemming from three incidents of sexual contact with two separate victims occurring in March and June of the same year. On March 16, 1998, Santos entered an Alford¹ plea of nolo contendere to all three counts and was sentenced to a suspended sentence of five years at the ACI, five years probation, no contact with the victims, recommended counseling and registration as a sex offender. (Tr. 3:12-15.) Santos completed this sentence without appealing.

¹ The now-common Alford plea stems from the Supreme Court case North Carolina v. Alford, 400 U.S. 25 (1970) whereby a court may accept a plea of guilty of nolo contendere—even though the defendant maintains his innocence—if the court finds that there is enough evidence to support a guilty verdict.

On June 22, 2012, Santos—represented by new counsel—filed a verified application for post-conviction relief pursuant to G.L. § 10-9.1-1, claiming that entry of conviction and imposition of sentence was in violation of state law, thereby necessitating that his plea be vacated. In his application for post-conviction relief, Santos argues that the plea colloquy at his Change of Plea Hearing in March 1998 did not comport with Rule 11 of the Superior Court Rules of Criminal Procedure,² and therefore his plea must be vacated. Specifically, Santos argues that there was no reference to, nor mention by either the trial justice or the prosecutor of certain elements of the crime to which Mr. Santos was about to plead. (P.’s memo p. 3 ¶1.) Therefore, Santos claims his plea was not knowing, voluntary, and intelligent because it failed to provide Santos with sufficient facts to support the allegations of the crimes for which he was charged and to which he entered his plea of nolo contendere. (P.’s memo p. 7 ¶1.) Santos further contends that his application for post-conviction relief fourteen years after his conviction by plea is timely and did not prejudice the State, and is thus not barred by the equitable doctrine of laches—an affirmative defense asserted by the State.

On July 3, 2012, the State filed a Motion to Dismiss Santos’ application for post-conviction relief in accordance with G.L. § 10-9.1-6. The State maintains that Santos failed to file his application in a timely manner, and has thereby waived his right to challenge the

² Rule 11 of Super R. Crim. P. provides: “A defendant may plead not guilty, guilty or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty, and shall not accept such plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or if a defendant corporation fails to appear, the court shall enter a plea of not guilty. The court shall not enter a judgment upon a plea of guilty or nolo contendere unless it is satisfied that there is a factual basis for the plea. 1972 Notes:

Rule 11 is the same as its federal counterpart except for the requirement in the final sentence that before entering judgment on a plea the court be satisfied that there exists a basis for a plea of nolo contendere as well as guilty. Cf. *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). The proposed rule is in accord with existing Rhode Island practice. The rule’s requirement that the court make inquiry of the defendant personally to determine that a plea of guilty or nolo contendere is made voluntarily and with knowledge reflects Rhode Island standards (e.g., *Flint v. Sharkey*, 107 R.I. 530, 268 A.2d 714 (1970); *Cole v. Langlois*, 99 R.I. 138, 206 A.2d 216 (1965); *Harris v. Langlois*, 100 R.I. 196, 212 A.2d 715 (1965)), as well as the requirements of due process under the Fourteenth Amendment. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Where a plea has been accepted without conforming to the requirements of the rule, the defendant’s plea must be set aside and he is entitled to plead anew. *McCarthy v. United States*, 394 U.S. 459, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969).”

judgment of the court under the doctrine of laches. The State contends that the delay in filing the petition for post-conviction relief was unreasonable and resulted in prejudice to the State by rendering it “unable to properly defend against the application on the ultimate issue.” (State’s memo p. 4 ¶1.) The State further argues that “when reviewing the record as a whole and the circumstances in their totality,” it is clear that Santos understood the nature of the charges against him and the consequences of his plea. (State’s memo p. 2 ¶1.) Therefore, the State argues that the trial court’s plea colloquy and finding that the Petitioner understood both the nature of the charges against him and the consequences of changing his plea complied with both Rule 11 and Due Process requirements. (State’s memo p. 2 ¶1.)

II

STANDARD OF REVIEW

Pursuant to G.L. § 10-9.1-1, a person may file an application for post-conviction relief if he or she believes that “the conviction violated [his or her] constitutional rights or that newly discovered facts require vacation of the conviction in the interest of justice.” Bleau v. Wall, 808 A.2d 637, 641 (R.I. 2002) (quoting Powers v. State, 734 A.2d 508, 513-14 (R.I. 1999)). Notably, the Rhode Island Supreme Court has held that the doctrine of laches applies to applications for post-conviction relief, and has identified a two-part test that must be met for a successful invocation of a laches defense. Raso v. Wall, 884 A.2d 391, 396 (R.I. 2005). Upon raising the defense that a petition for post-conviction relief is barred by laches “the State has the burden of proving by a preponderance of the evidence that the applicant unreasonably delayed in seeking relief and that the state is prejudiced by the delay.” Id. (“In a post-conviction proceeding the State may raise the affirmative defense of laches, which acts as a legitimate waiver of the [applicant’s] right to challenge a judgment.” Raso, 884 A.2d at 397 n.7 (brackets in original)).

“Whether or not there has been unreasonable delay and whether prejudice to the adverse

party has been established are both questions of fact, and a determination must be made in light of the circumstances of the particular case.” Id. (quoting Lombardi v. Lombardi, 90 R.I. 205, 209, 165 A.2d 911, 913 (1959)). This standard of review is consistent with the criteria long used in civil cases, which requires a showing of “negligence to assert a known right, seasonably coupled with prejudice to an adverse party.” Id. (citing Rodrigues v. Santos, 466 A.2d 306, 311 (R.I. 1983)).

III

ANALYSIS

The State contends that the defense of laches bars the petitioner’s application for post-conviction relief. As to the first prong of the two part test—unreasonable delay—the State maintains that the fourteen-year span between Petitioner’s plea and his present application for post-conviction relief is unreasonable, since it results solely from petitioner’s “lack of knowledge of existing law.” (State’s memo p. 3 ¶5). The State argues that if Petitioner was indeed confused as to the nature of the charges, Petitioner had the ability to consult with counsel years earlier—perhaps moments after he entered his allegedly misinformed plea—but failed to do so. Instead, the State argues, Petitioner never filed a petition for post-conviction relief prior to successfully completing the terms of the plea and sentence, and only does so now, creating prejudice to the State.

The State need not introduce direct evidence that the delay was unreasonable, but the Court, considering the circumstances as a whole, may draw reasonable inferences from such circumstances in finding the delay to have been unreasonable. The Court believes that the ground asserted for post-conviction relief was known, or should have been known, to petitioner well earlier than fourteen years after the plea. Thus, the Court finds that the State has met its burden of proving the delay to have been unreasonable. As to the prejudice to the State resulting

from such delay, the State represented to the Court that while it is their common practice to archive files older than five years, the State's file in this case—which likely contained Grand Jury transcripts, prosecuting attorney's notes, witness statements and investigational reports—cannot be located after a diligent search was undertaken. Furthermore, the State provides an affidavit from Santos' former attorney in which the attorney states that he does “not recall the facts or information pertaining to the case,” does “not recall any conversations” with Petitioner, and no longer “possess[es] any files or documentation pertaining to [the] matter,” prejudicing the State in its attempt to defend against Santos' petition for post-conviction relief. For example, if Santos' lawyer at the time of the plea was able to testify that based on either his recollection or notes in his file, he had a specific conversation with his client explaining the precise elements of a charge of second degree sexual assault, such testimony might convince the Court that at the time of the plea colloquy Petitioner was made aware of the nature of the charges and/or the facts available to the State to prove each of the elements, thus negating Petitioner's current position that by reason of the inadequacy of the plea colloquy, his change of plea was not knowing and voluntary. Furthermore, the State maintains—by way of direct testimony from a Rhode Island State Police detective—that all files, collected evidence, reports and other materials relating to the investigation conducted by the Rhode Island State Police into the charges for which Petitioner was ultimately indicted are no longer available, thus prejudicing the State in its effort to re-prosecute the Petitioner—if it chose to do so—if Petitioner's conviction is vacated.

Given these circumstances, this Court finds Petitioner's delay in seeking post-conviction relief to be unreasonable in this case. While Rhode Island's post-conviction relief statute provides that “an application may be filed at any time,” G.L. § 10-9.1-3, our Supreme Court has “constru[ed] the statutory term as meaning at any *reasonable* time.” Raso, 884 A.2d at 395

(italics in original). Furthermore, although the Rhode Island case law shows that a fourteen year delay in seeking post-conviction relief is not—by itself—per se unreasonable, in this instance Petitioner’s unexplained delay was unnecessary and unjustified—a delay which has clearly operated to the prejudice of the State. Raso, 884 A.2d at 396 (citing Pukas v. Pukas, 104 R.I. 542, 546, 247 A.2d 427, 429 (1968) (“[A]s is well settled, laches does not arise out of delay alone but out of delay which, unexplained, operates to the prejudice of the other party.”). Here, evidence presented shows that the State has effectively been rendered incapable of defending against Santos’ petition due to the delay in filing for post-conviction relief. See Raso, 884 A.2d at 396 (citing with approval to decisions of outside jurisdictions where prejudice was found when “the only witness who could respond to [petitioner's] claim is now deceased”; “where transcripts of the original hearing had been destroyed pursuant to routine court procedures”; and where “court transcripts are routinely destroyed after 10 years and the State now has no transcript in existence to refute, or prove, [petitioner's] claim.”) (citations omitted). Accordingly, this Court finds that the State has shown by a preponderance of the evidence that Petitioner’s delay in filing for post-conviction relief is unexplained, unreasonable and prejudices the State’s ability to defend against the petition for post-conviction relief, as well as prejudicing the state’s ability to re-prosecute the Petitioner if his prior conviction is vacated. Accordingly, the Court must deny and dismiss the application for post-conviction relief.

IV

CONCLUSION

For the foregoing reasons, this Court finds that the defense of laches bars Petitioner’s application for post-conviction relief. The Court, therefore, need not proceed to consider the merits of Petitioner’s application.

Counsel shall prepare an Order in conformance with this Decision.