IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RONNELLE L. JONES, Petitioner, v. RICHARD KEARNEY, Warden, and ATTORNEY GENERAL OF THE STATE OF DELAWARE, Respondents.	)	Civil Action No. 99-834-GMS

M E M O R A N D U M A N D O R D E R

After pleading guilty in the Delaware Superior Court to delivery of cocaine, Ronnelle L. Jones was sentenced to thirty years imprisonment to be suspended after fifteen years for decreasing levels of supervision. He is currently serving his sentence at the Delaware Correctional Center in Smyrna, Delaware. Jones has filed with the court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons set forth below, the court will deny Jones' petition.

I. BACKGROUND

On April 17, 1996, an undercover detective with the Delaware State Police purchased crack cocaine from Ronnelle L. Jones in Sussex County, Delaware. The initial field test indicated that the cocaine weighed 5.91 grams. As a result, Jones was charged with one count of trafficking in five grams or more of cocaine. Laboratory tests later established that the actual weight of the substance was less than five grams. On September 15, 1997, Jones was reindicted

for one count of trafficking in cocaine and one count of delivery of cocaine.

On February 11, 1998, the day his trial was to begin, Jones appeared before the Superior Court to enter a plea of guilty to one count of delivery of cocaine.[1] During the plea colloquy, the Superior Court (Graves, J.) asked Jones if he had been promised anything not contained within the plea agreement, and Jones replied, "Yes." (D.I. 20, App. to State's Answering Br. at B15-B16.) Without inquiring as to any promises made, Judges Graves completed the plea colloquy, and accepted Jones' guilty plea as knowing, voluntary, and intelligent. (*Id.* at B18.) Judge Graves sentenced Jones immediately to thirty years imprisonment to be suspended after fifteen years for decreasing levels of supervision. Jones did not appeal to the Delaware Supreme Court.

On November 10, 1998, Jones filed in the Superior Court a motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. Jones alleged, among other things, that his guilty plea was involuntary because he had been promised a five-year sentence but received fifteen years instead. After conducting an evidentiary hearing, Judge Graves acknowledged that he had erred by failing to inquire when Jones responded that he had been promised something outside the plea agreement. Judge Graves, however, found that Jones had not been promised a five-year sentence, concluded that the error was harmless, and denied Jones' Rule 61 motion. *Jones v. State*, Crim. A. No. 97-09-0316 (Del. Super. Ct. Feb. 25, 1999) ("*Jones I*"). The Delaware Supreme Court affirmed for the reasons set forth in the Superior Court's order. *Jones v. State*, No. 99, 1999, 1999 WL 1090566 (Del. Oct. 14, 1999)("*Jones II*").

Jones has now filed with the court the current habeas petition. The respondents

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[1] The prosecution entered a *nolle prosequi* on the charge of trafficking in cocaine.

acknowledge that Jones has exhausted each of his claims,[2] and ask the court to deny his petition on the merits.

II. STANDARDS OF REVIEW

A federal court may consider a habeas petition filed by a state prisoner only "on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"):

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –
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> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
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> > (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

According to the United States Supreme Court, a federal court may issue a writ of habeas corpus under § 2254(d)(1) only if it finds that the state court decision on the merits of a claim either (1) was contrary to clearly established federal law, or (2) involved an unreasonable application of clearly established federal law. *Williams v. Taylor*, 529 U.S. 362, 412 (2000). "A federal court may not grant a writ of habeas corpus merely because it concludes in its

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[2] A review of the record confirms that Jones exhausted each of his claims by presenting them to the state courts in his postconviction proceedings. (D.I. 20, App. to State's Answer Br. at B32-B39 and Appellant's Opening Br.)

independent judgment that the relevant state court decision applied clearly established federal law erroneously or incorrectly." *Gattis v. Snyder*, 278 F.3d 222, 228 (3d Cir. 2002).

Specifically, a federal court may grant the writ under the "contrary to" clause only "if the state court arrives at a conclusion opposite to that reached by [the United States Supreme Court] on a question of law or if the state court decides a case differently than [the United States Supreme Court] has on a set of materially indistinguishable facts." *Williams*, 529 U.S. at 412-13. The court "must first identify the applicable Supreme Court precedent and determine whether it resolves the petitioner's claim." *Werts v. Vaughn*, 228 F.3d 178, 197 (3d Cir. 2000)(citing *Matteo v. Superintendent, SCI Albion*, 171 F.3d 877, 888 (3d Cir. 1999)), *cert. denied*, 532 U.S. 980 (2001). In order to satisfy the "contrary to" clause, the petitioner must demonstrate "that Supreme Court precedent *requires* the contrary outcome." *Matteo*, 171 F.3d at 888 (emphasis added).

If the petitioner fails to satisfy the "contrary to" clause, the court must determine whether the state court decision was based on an unreasonable application of Supreme Court precedent. *Id.* Under the "unreasonable application" clause, the court "may grant the writ if the state court identifies the correct governing legal principle . . . but unreasonably applies that principle to the facts of the prisoner's case." *Williams*, 529 U.S. at 413. In other words, a federal court should not grant the petition under this clause "unless the state court decision, evaluated objectively and on the merits, resulted in an outcome that cannot reasonably be justified under existing Supreme Court precedent." *Matteo*, 171 F.3d at 890.

Respecting a state court's determinations of fact, this court must presume that they are correct. 28 U.S.C. § 2254(e)(1). The petitioner bears the burden of rebutting the presumption of

correctness by clear and convincing evidence. *Id.* The presumption of correctness applies to both explicit and implicit findings of fact. *Campbell v. Vaughn*, 209 F.3d 280, 286 (3d Cir. 2000), *cert. denied*, 531 U.S. 1084 (2001). When the state court did not specifically articulate its factual findings but denied a claim on the merits, federal courts on habeas review generally may "properly assume that the state trier of fact . . . found the facts against the petitioner." *Weeks v. Snyder*, 219 F.3d 245, 258 (3d Cir.), *cert. denied*, 531 U.S. 1003 (2000).

III. DISCUSSION

In his petition and memorandum in support thereof, Jones articulates the following claims for relief:[3]

(1) His guilty plea was involuntary because it was induced by the promise of a five-year sentence.

(2) The Superior Court abused its discretion by accepting his guilty plea without conducting a thorough inquiry.

(3) Counsel rendered ineffective assistance by failing to conduct a pretrial investigation, and by failing to ensure that the promise of a five-year sentence was honored.

(D.I. 2, 3.) Jones asks the court to conduct an evidentiary hearing, (D.I. 33), and to release him on bail pending review of his habeas petition, (D.I. 5, 22). The court addresses each of Jones' claims in turn.

A. Claim 1

Jones' first claim is that his guilty plea was involuntary because it was induced by the promise of a five-year sentence. As explained above, Jones indicated at the plea colloquy that a

[3] The court has renumbered Jones' claims for organizational purposes only.

promise outside the plea agreement had been made. Unfortunately, Judge Graves neglected to inquire respecting the promise. In his habeas petition, Jones asserts that this unexplored promise was the promise of a five-year sentence, and that his guilty plea was unlawfully induced by this unfulfilled promise.

In denying Jones' Rule 61 motion, Judge Graves found that Jones pleaded guilty in exchange for a fifteen-year sentence, and that he was not promised a five-year sentence. Judge Graves articulated the following reasons for this finding:

> 1. In the defendant's own testimony at the [Rule 61 evidentiary] hearing, he acknowledged that at one point in time his attorney was discussing a five year mandatory sentence but that later he came back and told him that it was a fifteen year mandatory sentence. This all took place prior to the final case review in which the defendant was offered the fifteen year mandatory plea and rejected it. . . .
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> 2. The defendant's own witnesses acknowledged that the plea that was discussed was a fifteen year sentence. Mr. Houston testified that the defendant was told twice that the plea offer was to fifteen years;
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> 3. Defense counsel testified that at final case review and on the morning of trial, the defendant's plea was nothing but fifteen years mandatory. In the guilty plea form, the defendant answered yes and filled in fifteen years as to the question of whether or not there was a mandatory/minimum penalty;
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> 4. The defendant signed a plea agreement that contained the language "thirty years at Level 5, suspended after fifteen years . . ."
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> 5. The transcript of the plea evidences that the defendant clearly understood the consequences of his plea and the fact that he was giving up the right to go to trial on that day. The Court reviewed all of the defendant's trial rights with him and the defendant, while under oath, acknowledged that the Court must sentence him to a minimum mandatory sentence of fifteen years. In fact, the fifteen year minimum sentence was mentioned three times prior to the Court accepting the plea. It was mentioned five times prior to the defendant addressing the Court concerning sentencing. It was mentioned a total of six times prior to the Court actually entering the sentence . . .
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> . . . It is clear to the Court that the Court erred in not immediately following up on the defendant's response of "yes" concerning any promises other than those contained in the plea agreement. It is equally clear that the defendant's present allegation that he was

promised five years clearly has no merit.

Jones I at 7-9.

As the foregoing demonstrates, the Superior Court rejected Jones' claim of an involuntary guilty plea based on a factual determination, *i.e.*, that he was not promised a five-year sentence. It is this factual determination, not the application of any legal principles, which Jones challenges in asserting that his guilty plea was involuntary. Thus, the relevant inquiry is whether the state courts' decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). Additionally, the court must presume that the Superior Court's factual findings are correct unless rebutted by clear and convincing evidence. 28 U.S.C. § 2254(e)(1). *See Sanna v. DiPaolo*, 265 F.3d 1, 7 (1st Cir. 2001)(stating that § 2254(d)(2) must be read in conjunction with its "companion subsection," § 2254(e)(1)).

After reviewing the record in this matter,[4] the court cannot conclude that the Superior Court's finding that Jones was not promised a five-year sentence is unreasonable in light of the evidence presented. Jones was informed several times at the plea colloquy that a fifteen-year mandatory minimum sentence would be imposed. Prior to pleading guilty, he signed a plea agreement and a guilty plea form acknowledging the mandatory minimum sentence of fifteen

[4] The court did not order, nor did the parties provide, certified transcripts of the hearing at which Jones pleaded guilty and was sentenced, or of the Rule 61 evidentiary hearing. The Appendix to the State's Answering Brief filed with the Delaware Supreme Court contains a copy of what appears to be the entire transcript of the plea colloquy and sentencing hearing. (D.I. 20, B12-B21.) Also attached to various filings in this court and the state courts are portions of the transcript of the Rule 61 evidentiary hearing. Each of the parties relies on these transcripts, and neither party contests their accuracy in any way. Accordingly, the court presumes their accuracy and relies on them in rendering a decision in this matter.

years. Jones also conceded that the discussion of a possible five-year sentence was related to the charge of trafficking, not the charge of delivery to which he pleaded guilty. Defense counsel, as well as Jones' own witnesses, testified that the final plea offer was for a fifteen-year sentence. In short, the evidence amply supports Judge Graves' factual determination that Jones was not promised a five-year sentence. The court thus concludes that his finding is entirely reasonable.

Notwithstanding, Jones may rebut the Superior Court's finding with clear and convincing evidence that he was promised a five-year sentence. *See* 28 U.S.C. § 2254(e)(1). To this end, Jones offers a plea agreement dated October 6, 1997, indicating that he would receive a five-year sentence. (D.I. 3, Mem. at Exh. A.) This agreement, however, is not signed by either Jones or his attorney. (*Id.*) Moreover, this agreement indicates that Jones agreed to plead guilty to the charge of trafficking. (*Id.*) It is beyond dispute that Jones pleaded guilty to delivery of cocaine, not trafficking. Certainly, an unsigned plea agreement respecting a trafficking charge that was eventually dismissed does not support Jones' assertion that he was promised a five-year sentence on the charge of delivery of cocaine. Jones' only other evidence is his own uncorroborated and conclusory assertion that he was promised a five-year sentence, and his affirmative response to Judge Graves' question during the plea colloquy. Plainly, Jones has fallen short of offering clear and convincing evidence that he was promised a five-year sentence.

In sum, the Superior Court's factual determination that Jones was not promised a five-year sentence is entirely reasonable in light of the evidence presented. Jones has failed to offer clear and convincing evidence to rebut the Superior Court's finding. For this reason, his claim of an involuntary guilty plea does not provide a basis for federal habeas relief.

B. Claim 2

Jones' next claim is that the Superior Court abused its discretion by accepting his guilty plea without conducting a thorough inquiry. Jones alleges that Judge Graves failed to advise him of the nature of the charges or of the maximum penalties he faced as required by Rule 11 of the Superior Court Rules of Criminal Procedure. Jones also notes that Judge Graves himself acknowledged that he and counsel must have been "asleep at the wheel" when they failed to inquire respecting Jones' response of a promise outside the plea agreement. Nonetheless, the Superior Court concluded that "defendant was advised that he could receive a sentence up to ninety-nine years," and that his guilty plea was entered voluntarily. *Jones I* at 3-4.

It is well established that a habeas petitioner who has entered a guilty plea upon the advice of counsel may attack only the voluntary and intelligent character of his guilty plea. *Tollett v. Henderson*, 411 U.S. 258, 267 (1973); *Lesko v. Lehman*, 925 F.2d 1527, 1537 (3d Cir. 1991); *Siers v. Ryan*, 773 F.2d 37, 42 (3d Cir. 1985). "[W]hen the judgment of conviction upon a guilty plea has become final . . . , the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack." *Lesko*, 925 F.2d at 1537 (quoting *United States v. Broce*, 488 U.S. 563, 569 (1989)). In order to demonstrate that his guilty plea was unknowing or involuntary, a petitioner must present proof that he was not advised of, or did not understand, the direct consequences of his plea. *Brady v. United States*, 397 U.S. 742, 755 (1970).

To the extent Jones asserts that his guilty plea was involuntary and unknowing because he was not advised of the nature of the charges against him or of the maximum penalties he

faced, the record contradicts this assertion. On February 11, 1998, Jones signed a Truth In Sentencing Guilty Plea Form, indicating that he was pleading guilty to delivery of cocaine. (D.I. 20, App. to Appellant's Opening Br. at A9.) The Guilty Plea Form acknowledges that the statutory penalty for the charge of delivery is "30 yrs L5 to 99 yrs," with a mandatory minimum penalty of fifteen years. (*Id.*) At the plea colloquy, Jones testified under oath that he signed the Guilty Plea Form, that he filled out the answers in his own handwriting, that his answers were true and accurate, and that he had no problems reading and understanding the Guilty Plea Form. (D.I. 20, App. to State's Answering Br. at B13-B15.) Although it appears that Judge Graves did not *personally* inform Jones of the nature of the charges or of the maximum penalties he faced, the record is clear that Jones understood the charges against him and the possible penalties he faced. Because the record demonstrates conclusively that Jones' guilty plea was voluntary and knowing, whether Judge Graves strictly adhered to Rule 11 is not determinative.

Additionally, to the extent Jones alleges that the Superior Court abused its discretion by accepting a guilty plea induced by the promise of a five-year sentence, Judge Graves ruled that Jones was not promised a five-year sentence. As explained above, the court has determined that this finding is reasonable and remains unrebutted. This contention, therefore, is without merit.

C. Claim 3

Jones' final claim is that his attorney rendered ineffective assistance by failing to conduct a pretrial investigation and by failing to enforce the promise of a five-year sentence. Jones asserts that if counsel had conducted an investigation, he would have learned that Jones was not eligible for sentencing as a habitual offender. Jones also asserts that counsel would have learned that the weight of the cocaine was under five grams, and should have moved to dismiss the

charge of trafficking. In addition, Jones alleges that he would have received only five years in prison if counsel had enforced the promise of a five-year sentence.

Because the state courts rejected Jones' claim of ineffective assistance on the merits, this court's review of any legal issues is limited to determining whether the decision either was contrary to, or involved an unreasonable application of, clearly established federal law. 28 U.S.C. § 2254(d)(1); *Williams*, 529 U.S. at 412. The clearly established federal law governing claims of ineffective assistance of counsel is the familiar two-prong test of *Strickland v. Washington*, 466 U.S. 668 (1984). A defendant claiming ineffective assistance of counsel must show (1) that counsel's performance was deficient, and (2) a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Id.* at 686, 694. In the context of a challenge to a guilty plea based on ineffective assistance, the *Strickland* test requires a defendant to show (1) that counsel's performance was deficient, and (2) a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). As explained below, Jones has failed to satisfy these standards.

First, Jones' "habitual offender" argument cannot provide a basis for finding counsel ineffective. Even assuming that Jones is correct that he could not be sentenced as a habitual offender, he has failed to explain how he was prejudiced by counsel's failure to discover this. The record reflects that counsel repeatedly advised Jones that based on his prior conviction, he was facing up to 99 years in prison. Jones has failed to allege that this advice was incorrect or to explain why he would not have pleaded guilty if counsel had known he was not a habitual offender.

Next, Jones asserts that counsel was ineffective for failing to file a motion to dismiss the charge of trafficking. At the outset of the plea colloquy, the prosecutor informed Judge Graves that the state was entering a *nolle prosequi* on the trafficking charge because the weight of the cocaine was less than five grams. (D.I. 20, App. to State's Answering Br. at B12.) Jones has failed to explain how counsel could be considered ineffective for failing to move to dismiss a charge that was voluntarily dismissed by the prosecution.

Finally, Jones alleges that counsel rendered ineffective assistance by failing to enforce the promise of a five-year sentence. As described above, the record establishes that Jones pleaded guilty in exchange for a fifteen-year sentence, not a five-year sentence. Certainly counsel cannot be ineffective for failing to enforce a promise that was never made.

In short, the state courts' rejection of Jones' claim of ineffective assistance on the merits is neither contrary to, nor did it involve an unreasonable application of, clearly established federal law. For this reason, federal habeas relief as to this claim is unavailable.

IV. REQUESTS FOR AN EVIDENTIARY HEARING AND FOR RELEASE

The AEDPA grants the court discretion to conduct an evidentiary hearing on habeas review, but only in limited circumstances. *See* 28 U.S.C. § 2254(e); *Campbell v. Vaughn*, 209 F.3d 280, 286-87 (3d Cir. 2000), *cert. denied*, 531 U.S. 1084 (2001). The court *may*, for example, conduct an evidentiary hearing if the petitioner "has diligently sought to develop the factual basis of a claim for habeas relief, but has been denied the opportunity to do so by the state court." *Campbell*, 208 F.3d at 287 (quoting *Cardwell v. Greene*, 152 F.3d 331, 337 (4th Cir. 1998)). In such a situation, the failure to develop the factual record is not the petitioner's

fault. *Campbell*, 208 F.3d at 286-87.

In exercising its discretion, the court should focus "on whether a new evidentiary hearing would be meaningful, in that a new hearing would have the potential to advance the petitioner's claim." *Id.* at 287. The court properly refuses to conduct an evidentiary hearing where a petitioner fails "'to forecast any evidence beyond that already contained in the record' that would help his cause, 'or otherwise to explain how his claim would be advanced by an evidentiary hearing.'" *Id.* (quoting *Cardwell*, 152 F.3d at 338).

Jones asks the court to conduct an evidentiary hearing "so that [he] can place the claims to the honorable court and bring forth a better understanding of the merits of this case, and to establish the prejudice that [he] suffered." (D.I. 33.) He fails, however, to identify any evidence outside the record that would help his cause, or to explain how any of his claims would be advanced by an evidentiary hearing. For this reason, Jones' request for an evidentiary hearing is denied.

Jones also requests that the court order his release pending disposition of his habeas petition. (D.I. 5, 22.) Because the court will deny Jones' petition, his requests for release pending habeas review are now moot. Even if his requests were not moot, Jones has failed to articulate any extraordinary circumstances that would allow the court to order his release from state custody pending federal habeas review. *See Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992)(stating that in habeas proceedings, bail is an "exceptional form of relief" available only where "extraordinary circumstances" exist).

V. CERTIFICATE OF APPEALABILITY

Finally, the court must determine whether a certificate of appealability should issue. *See* Third Circuit Local Appellate Rule 22.2. The court may issue a certificate of appealability only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This requires the petitioner to "demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Here, the court has concluded that federal habeas relief is unavailable as to each of Jones' claims. The court is persuaded that reasonable jurists would not find its conclusions debatable or wrong. Jones has, therefore, failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not be issued.

VI. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Jones' petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (D.I. 2) is DENIED.

2. Jones' motion for an evidentiary hearing (D.I. 33), motion for bail (D.I. 5), and motion and application seeking affirmative relief (D.I. 22) are DENIED.

3. The court declines to issue a certificate of appealability for failure to satisfy the standard set forth in 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

Dated: March 6 , 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE