

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDUARDO COLLADO,	§	
	§	No. 157, 2011
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0709012801
Appellee.	§	

Submitted: September 23, 2011

Decided: December 22, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

O R D E R

This 22nd day of December 2011, upon consideration of the briefs on appeal and the Superior Court record, it appears to the Court that:

(1) The appellant, Eduardo Collado, has appealed the Superior Court's March 21, 2011 denial of his motion for postconviction relief. We have determined that there is no merit to the appeal. Accordingly, we affirm the judgment of the Superior Court.

(2) In September 2007, Collado was arrested and charged with having fatally stabbed his estranged girlfriend's sister. In November 2007, Collado was indicted on charges of Murder in the First Degree and

Possession of a Deadly Weapon During the Commission of a Felony (“PDWDCF”).

(3) On June 10, 2008, Collado pled guilty to Murder in the Second Degree and PDWDCF. As part of the plea agreement, the parties agreed to a thirty-year prison sentence. The parties also requested a presentence investigation.

(4) On September 12, 2008, the Superior Court sentenced Collado for Murder in the Second Degree to twenty-eight years at Level V, fifteen years mandatory, and for PDWDCF to twenty years at Level V, suspended after two years mandatory, for decreasing levels of supervision. Collado did not appeal.

(5) In August 2009, Collado filed a motion for postconviction relief under Superior Court Criminal Rule 61 (“Rule 61”). Collado amended the postconviction motion in November 2009 and twice more in April 2010.

(6) Collado’s motion as amended raised nine claims of ineffective assistance of counsel. Collado also alleged prosecutorial misconduct and involuntary guilty plea.

(7) The record reflects that Collado’s claims for postconviction relief were thoroughly briefed in the Superior Court. Collado’s defense counsel filed affidavits responding to the claims of ineffective assistance of

counsel as they unfolded, the State filed responses, and Collado filed a reply. The State also responded to Collado's motion for appointment of counsel that was separately considered and denied by the Commissioner's order of July 27, 2010.

(8) On March 1, 2011, the Commissioner issued findings of fact and recommendations. Based on the factual findings, the Commissioner recommended that Collado's ineffective assistance of counsel claims were without merit, that the claim of prosecutorial misconduct was procedurally barred, and that Collado's claim of involuntary guilty plea was belied by the record.

(9) By order dated March 21, 2011, the Superior Court upon *de novo* review, adopted the Commissioner's recommendations and denied Collado's motion for postconviction relief. On appeal from that order, Collado continues to claim ineffective assistance of counsel, prosecutorial misconduct and involuntary guilty plea.

(10) The Court has carefully considered Collado's opening and reply briefs, the State's answering brief, and the Superior Court record, including defense counsel's affidavits responding to Collado's allegations of ineffective assistance of counsel. The Court has concluded that the denial of Collado's postconviction motion as thrice amended should be affirmed on

the basis of the Superior Court's March 21, 2011 order adopting the Commissioner's March 1, 2011 findings of fact and recommendations.

(11) Contrary to Collado's assertions on appeal, it appears from the record that Collado's guilty plea was knowing and voluntary. A review of the plea colloquy transcript reveals that Collado was responsive, cooperative and admittedly well-aware of what he was doing.

(12) In the absence of clear and convincing evidence to the contrary, Collado is bound by the representations he made during the plea colloquy and on the guilty plea forms that he was satisfied with the representation provided by his counsel, and that no one had coerced him into entering the plea.¹ Furthermore, Collado has presented no evidence, and the record does not reflect, that, but for his defense counsel's alleged errors, he would not have pleaded guilty but would have insisted on proceeding to trial.²

(13) Finally, in view of the agreed-upon sentence imposed by the Superior Court, the Court agrees that Collado cannot show that he was prejudiced by the prosecutor's alleged "misconduct," namely the misidentification of a photograph of the victim's nieces. As a result,

¹ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

² In the context of a guilty plea, a defendant has the burden of showing that, but for his counsel's deficient performance, he would not have pleaded guilty and would have insisted on proceeding to trial. *Albury v. State*, 551 A.2d 53 (Del. 1988).

Collado's claim of prosecutorial misconduct was properly denied as procedurally barred pursuant to Rule 61(i)(3) without exception.³

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

³ Under Rule 61(i)(3), any ground for relief that is not adjudicated in the proceedings leading to the judgment of conviction is barred unless the movant demonstrates "cause" for failure to assert the ground and "prejudice" stemming from the alleged grievance. Rule 61(i)(5) states in pertinent part that the procedural bar of Rule 61(i)(3) shall not apply "to a colorable claim that there was a miscarriage of justice because of a constitutional violation."