

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERIC DOLBY,	§
	§ No. 715, 2011
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID Nos. 0801036191
Plaintiff Below-	§
Appellee.	§

Submitted: February 1, 2012

Decided: March 2, 2012

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

ORDER

This 2nd day of March 2012, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record on appeal, it appears to the Court that:

(1) The appellant, Eric Dolby, filed this appeal from the Superior Court's denial of his motion for postconviction relief. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Dolby's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Dolby was indicted in 2008 on multiple criminal charges including two counts of first degree capital murder. On

April 20, 2009, the date his trial was set to begin, Dolby pled guilty to one count each of second degree murder, first degree conspiracy, and first degree arson. In exchange for his guilty plea, the State dismissed the remaining charges. Prior to his sentencing, Dolby filed a motion to withdraw his plea, which he subsequently withdrew on May 27, 2009. The Superior Court sentenced Dolby on June 25, 2009 to life imprisonment plus three years. Dolby did not file a direct appeal. Instead, on August 16, 2010, he filed a motion for postconviction relief, which the Superior Court denied. This appeal followed.

(3) Dolby essentially raises three issues in his opening brief on appeal. First, he contends that his constitutional rights were violated when his counsel failed to request, and the Superior Court failed to order, a competency hearing before accepting his guilty plea. Second, Dolby argues that the State improperly threatened him with a possible death sentence in order to coerce his guilty plea. Finally, Dolby contends that the Superior Court erred at his plea hearing by failing to inform him of the nature of the offenses to which he was pleading guilty and by failing to administer proper warnings before questioning him.

(4) Before the Superior Court, or this Court on appeal, may address the substantive merits of a defendant's postconviction claims, the court first

must consider the procedural requirements of Superior Court Criminal Rule 61.¹ In this case, Dolby did not raise his claims prior to the entry of his guilty plea nor did he file a direct appeal. Rule 61(i)(3) provides that any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is thereafter barred unless the defendant can establish cause for relief from the procedural default and prejudice from a violation of the defendant's rights.² Under Rule 61(i)(5), a defendant's failure to raise his claim in the proceedings leading to his conviction may be excused if the defendant asserts a colorable claim of a constitutional violation that undermined the integrity of the proceedings leading to the conviction.³

(5) With respect to Dolby's latter two claims, alleging coercion by the prosecutor and irregularities in the guilty plea hearing, Dolby has not alleged any cause for his failure to raise these claims during the proceedings leading to his conviction. Thus, these claims are procedurally barred by Rule 61(i)(3). Moreover, Dolby has failed to overcome this procedural hurdle because it is abundantly clear that these claims are unsubstantiated. A claim of coercion in the plea bargaining process can only be substantiated

¹*Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

² Del. Super. Ct. Crim. R. 61(i)(3) (2012).

³ Del. Super. Ct. Crim. R. 61(i)(5).

if the prosecutor threatens to take action that is not legally authorized.⁴ In this case, the record supported a capital murder charge and the grand jury so indicted Dolby.⁵ The prosecutor's actions, thus, were legally authorized.

(6) Furthermore, the guilty plea colloquy does support Dolby's claims of irregularities in the guilty plea proceedings. Dolby clearly was informed of the charges against him. He was sworn under oath and acknowledged that he had read all of the charges to which he was pleading guilty and that he understood those charges and the evidence leading to them. He stated that had not been threatened or forced to enter a plea and was entering his plea freely and voluntarily. He expressed satisfaction with his counsel's performance and indicated that he was pleading guilty because he was, in fact, guilty of the charged offenses. In the absence of clear and convincing evidence to the contrary, Dolby is bound by these statements.⁶

(7) Similarly, Dolby's claim of ineffective assistance of counsel also is flatly contradicted by the record. Defense counsel, in fact, did have Dolby examined by a mental health professional, who concluded that Dolby was competent to stand trial. Accordingly, there is no factual basis for

⁴ *Albury v. State*, 551 A.2d 53, 61 (Del. 1988).

⁵ The record reflects that Dolby and his codefendant were arrested for murder after they ordered the victim, who was a stranger to them, into the trunk of his car. After driving the vehicle for a short distance, the codefendants unsuccessfully attempted to set the car on fire with the victim still in the trunk. The codefendants left the scene only to return a short while later. Upon their return, they successfully set the car on fire, killing the victim.

⁶ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

Dolby's claim of attorney error. Moreover, in light of counsel's independent evaluation and the court-ordered mental health evaluation, there was no factual or legal basis for the Superior Court to order any additional evaluation prior to accepting Dolby's guilty plea. Accordingly, we find no error by counsel or the trial court with respect to Dolby's first claim on appeal.

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

BY THE COURT:

/s/ Randy J. Holland
Justice