

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LLOYD L. WELCH,	§	
	§	No. 402, 1999
Defendant Below,	§	
Appellant,	§	Court Below -- Superior Court
	§	of the State of Delaware, in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. A. Nos. IN97-07-1517R1,
	§	1519R1, 1522R1. Plaintiff
Below,	§	
Appellee.	§	Def. ID No. 9707013932

Submitted: February 11, 2000

Decided: April 5, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

O R D E R

This 5th day of April 2000, upon consideration of the appellant's opening brief and appendix and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Lloyd L. Welch ("Welch"), has appealed an order of the Superior Court denying his first motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). The State of Delaware ("State") has moved to affirm the judgment of the Superior Court on the ground that is manifest on the face of Welch's opening brief that the appeal is without merit. Supr. Ct. R. 25(a).

(2) In 1997, Welch was charged by a grand jury indictment with 11 offenses, including three counts of First Degree Unlawful Sexual Intercourse, a class A felony; three counts of Third Degree Unlawful Sexual Penetration, a class E felony; four counts of Second Degree Unlawful Sexual Contact, a class G felony; and one count of Offensive Touching, an unclassified misdemeanor. On January 5, 1998, Welch entered a guilty plea in the Superior Court to three of the 11 offenses, i.e., one count each of First Degree Unlawful Sexual Intercourse, Third Degree Unlawful Sexual Penetration, and Second Degree Unlawful Sexual Contact. Pursuant to the plea agreement, the State entered a *nolle prosequi* on the remaining charges in the indictment. After a pre-sentence investigation (“PSI”), Welch was sentenced to life in prison plus seven years, suspended after 33 years at Level V, for one year at Level IV, and the balance at decreasing levels of supervision. Welch did not file a direct appeal.

(3) On June 28, 1999, Welch filed his *pro se* motion for postconviction relief. Welch alleged that his guilty plea was involuntary due to ineffective assistance of counsel. By order dated August 12, 1999, the Superior Court denied Welch’s motion. This appeal followed.

(4) On appeal, Welch asserts ineffective assistance of counsel. In addition, Welch claims that (i) the State violated the plea agreement; and (ii) the Superior Court abused its discretion when imposing a sentence outside of the

Truth-in-Sentencing (“TIS”) guidelines. In its motion to affirm, the State contends that Welch’s claims are without merit and thus are barred by Rule 61(i)(3).

(5) Welch contends that the State violated the plea agreement when the prosecutor went outside of the agreed-upon PSI and (i) made a sentence recommendation and (ii) requested that the victim’s father be allowed to speak at sentencing. Welch did not raise this claim in the Superior Court. Claims not fairly presented in the trial court are not considered by this Court unless the interests of justice require otherwise.¹ The interests of justice do not require that we consider this claim. The plea agreement, which bears Welch’s signature, reflects that the State agreed to a PSI. Nothing in the plea agreement indicates that the State made any further agreement as to sentencing.²

(6) Next, Welch claims that the Superior Court erred when it imposed a sentence outside of the TIS guidelines. Again, Welch did not raise this claim in the Superior Court, and the interests of justice do not require that we consider the claim here.³ The Superior Court legally could have sentenced Welch to the

¹ Supr. Ct. R. 8.

² Indeed, at the guilty plea hearing on January 5, 1998, the trial judge stated, “The State has not agreed as to what it will recommend when you are sentenced.”

Hr’g Transcript at 9.

³ Supr. Ct. R. 8.

maximum penalty of life in prison plus seven years for his crimes, without suspension of any part of the sentence.⁴ The Superior Court's decision not to follow the nonbinding TIS guidelines, or the court's alleged failure to state its reasons for not following the guidelines, is no basis for appeal.⁵

(7) In the context of a guilty plea, a successful claim of ineffective assistance of counsel is one that demonstrates that (i) "counsel's representation fell below an objective standard of reasonableness;" and (ii) "counsel's actions were so prejudicial that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial."⁶ A review of counsel's representation is subject to a "strong presumption that the representation was professionally reasonable."⁷

(8) On appeal, Welch alleges that his counsel failed to investigate the case before advising Welch to plead guilty. Second, Welch alleges that his

⁴ See 11 Del. C. § 4205 (providing sentences for felonies).

⁵ *Mayes v. State*, 604 A.2d 839, 846 (1992). It does not appear that Welch ordered the preparation of the sentencing transcript for this appeal.

⁶ *Somerville v. State*, Del. Supr., 703 A.2d 629, 631 (1997) (citations omitted).

⁷ *Flamer v. State*, Del. Supr., 585 A.2d 736, 753 (1990).

counsel promised him that, if he pleaded guilty, he would be sentenced to no more than 17 years.⁸

(9) We agree with the Superior Court that Welch's allegations of ineffective assistance of counsel are conclusory and warranted summary dismissal of his motion for postconviction relief. Welch has provided no evidence that his counsel's conduct fell below an objective standard of reasonableness. Welch's conclusory allegations are contradicted and/or denied by the Truth-in-Sentencing Guilty Plea Form and by Welch's statements at the plea colloquy. Welch represented to the Superior Court that he voluntarily entered his plea and was satisfied with his counsel's representation. Welch indicated that he understood that he was facing a minimum of 15 years in prison and up to life in prison plus seven years. On the guilty plea form, Welch specifically denied that anyone had promised him anything to induce his guilty plea. In the absence of clear and convincing evidence to the contrary, Welch is bound by his answers on the guilty plea form and by his sworn testimony prior to the acceptance of his guilty plea.⁹ Welch has failed to sustain his burden of demonstrating that the assistance of his counsel was ineffective.

⁸ In his postconviction motion, Welch made more generalized, albeit less coherent, allegations of ineffective assistance of counsel.

⁹ *Somerville v. State*, Del. Supr., 703 A.2d 629, 632 (1997).

(10) It is manifest on the face of Welch's opening brief that the appeal is without merit. The issues raised are clearly controlled by settled Delaware law, and to the extent the issues on appeal implicate the exercise of judicial discretion, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/ Joseph T. Walsh
Justice