

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN W. COOPER, JR.,	§
	§ No. 55, 2008
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0603002912
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 8, 2008
Decided: June 16, 2008

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

ORDER

This 16th day of June 2008, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, John W. Cooper, Jr., filed an appeal from the Superior Court's January 16, 2008 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) In August 2006, Cooper pleaded guilty to one count of Rape in the Third Degree and one count of Continuous Sexual Abuse of a Child in connection with the sexual abuse of his minor daughter. In exchange for his guilty plea, the State dismissed eight counts each of Rape in the First Degree and Unlawful Sexual Contact in the Second Degree. On the first conviction, Cooper was sentenced to fifteen years of incarceration at Level V, to be suspended after five years for probation. On the second conviction, he was sentenced to two years at Level V. Cooper did not file a direct appeal of his convictions and sentences.

(3) In this appeal from the Superior Court's denial of his motion for postconviction relief, Cooper claims that the attorney who represented him during the plea proceedings provided ineffective assistance by a) failing to conduct a reasonable investigation; b) misrepresenting material facts as a way to force a guilty plea; and c) failing to seek the suppression of statements he made while intoxicated.

(4) Cooper's first claim was not presented to the Superior Court in the first instance. As such, we will not consider it in this appeal.¹

(5) Cooper's second claim is that his counsel misrepresented material facts as a way to force him to plead guilty. In order to prevail on a

¹ Supr. Ct. R. 8.

claim of ineffective assistance of counsel in connection with a guilty plea, a defendant must demonstrate that, but for his counsel's unprofessional errors, he would not have pleaded guilty, but would have insisted on proceeding to trial.² The defendant must make concrete allegations of actual prejudice, and substantiate them, or risk summary dismissal.³ The record does not support Cooper's contention that his counsel misrepresented the content of the victim's various statements concerning the nature of the sexual contact, thereby coercing him to plead guilty. As such, he cannot demonstrate that, but for his counsel's errors, he would not have pleaded guilty, but would have insisted on proceeding to trial. We, therefore, conclude that Cooper's second claim is without merit.

(6) Cooper's third claim is that his counsel failed to move to suppress statements he made to the police while intoxicated. We have reviewed Cooper's plea colloquy and it clearly reflects that his guilty plea was entered knowingly, intelligently, and voluntarily. Because a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea,⁴ including a claim that counsel failed to file a

² *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

³ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

⁴ *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).

motion to suppress a confession,⁵ we conclude that this claim, too, is without merit.

(7) It is manifest on the face of Cooper's opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁵ *Davis v. State*, Del. Supr., No. 157, 1992, Walsh, J. (Dec. 7, 1992).