

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEERON SABB,	§
	§ No. 342, 2020
Defendant Below,	§
Appellant,	§ Court Below–Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID No. 1807019095 (S)
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: March 16, 2021

Decided: May 28, 2021

Before **VALIHURA, VAUGHN**, and **TRAYNOR**, Justices.

ORDER

After careful consideration of the appellant’s opening brief, the State’s motion to affirm, and the Superior Court record, it appears to the Court that:

(1) The appellant, Leeron Sabb, appeals the Superior Court’s denial of his motion for postconviction relief. The State has filed a motion to affirm the Superior Court’s judgment on the ground that it is manifest on the face of Sabb’s opening brief that his appeal is without merit. We agree and affirm.

(2) In 2018, Sabb was arrested and charged by indictment with various offenses, including three counts of possession of a firearm by a person prohibited (“PFBPP”), stemming from a domestic incident. On February 6, 2019, Sabb entered

a *Robinson* plea¹ to aggravated menacing and possession of ammunition by a person prohibited (“PABPP”) as a lesser-included offense of PFBPP. In exchange for Sabb’s plea, the State dismissed the remaining seven counts of the indictment. The Superior Court immediately sentenced Sabb in accordance with the plea agreement as follows: for aggravated menacing, as a habitual offender under 11 *Del. C.* § 4214(c), to eight years of Level V incarceration; and for PABPP, to eight years of Level V incarceration, suspended for eighteen months of Level III probation. Sabb did not appeal his convictions or sentence.

(3) On November 22, 2019, Sabb filed a timely motion for postconviction relief under Superior Court Criminal Rule 61 (“Rule 61”). Sabb’s arguments could be fairly summarized as follows: (i) his initial statements to the police violated his constitutional rights because he was intoxicated; (ii) he was denied the assistance of counsel at critical stages of the proceedings; (iii) trial counsel was ineffective for failing to investigate his potential defenses and file related motions on his behalf; (iv) trial counsel coerced Sabb into pleading guilty; (v) trial counsel knew of Sabb’s intellectual limitations and mental health issues and failed to counsel him accordingly; and (vi) Saab was not permitted to enter a *Robinson* plea.

(4) After expanding the record with an affidavit from trial counsel and a

¹ *Robinson v. State*, 291 A.2d 279, 281 (Del. 1972) (permitting the Superior Court to accept a guilty plea where the defendant does not admit guilt if (i) the plea is voluntarily, knowingly, and intelligently made, and (ii) there is a factual basis for the plea).

response from the State, the Superior Court denied Sabb’s motion for postconviction relief. The Superior Court first found that the plea colloquy as well as Sabb’s representations on the Truth-In-Sentencing Guilty Plea Form and the Plea Agreement established that Sabb had knowingly and voluntarily entered into a *Robinson* plea for aggravating menacing and PABPP. The Superior Court next concluded that, by knowingly and voluntarily entering a *Robinson* plea, Sabb had effectively waived his right to challenge errors or defects preceding the entry of the plea. The Superior Court also found that Sabb’s ineffective-assistance-of-counsel claims, although procedurally barred, were meritless. Finally, the Superior Court determined that the record belied Sabb’s claim that his desire to enter a *Robinson* plea was “unfulfilled.” This appeal followed.

(5) We review the Superior Court’s denial of postconviction relief for abuse of discretion and questions of law *de novo*.² The procedural bars of Rule 61 must be considered before any substantive claims are addressed.³ Rule 61(i)(3) bars any ground for relief that was not asserted in the proceedings leading to the judgment of conviction.⁴ On the other hand, ineffective-assistance-of-counsel claims are properly raised in a timely filed motion for postconviction relief.⁵ Claims of

² *Baynum v. State*, 211 A.3d 1075, 1082 (Del. 2019).

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁴ Del. Super. Ct. Crim. Rule 61(i)(3).

⁵ *Green v. State*, 238 A.3d 160, 175 (Del. 2020).

ineffective assistance of counsel are governed by the two-prong test set forth in *Strickland v. Washington*.⁶ In order to prevail on a claim of ineffective assistance of counsel after a defendant has entered a guilty plea, the defendant must demonstrate that (i) trial counsel’s representation fell below an objective standard of reasonableness,⁷ 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.”⁸ Although not insurmountable, there is a strong presumption that counsel’s representation was professionally reasonable.⁹ “If an attorney makes a strategic choice after thorough investigation of [the] law and facts relevant to plausible options, that decision is virtually unchallengeable.”¹⁰

(6) On appeal, Sabb reiterates his arguments that trial counsel was ineffective for failing to investigate his case and file various motions on his behalf as well as his argument that his plea was not knowing and intelligent. After careful review of the parties’ positions and the record—including trial counsel’s affidavit—we conclude that the Superior Court’s judgment must be affirmed.

⁶ 466 U.S. 668 (1984).

⁷ *Id.* at 687-88.

⁸ *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997) (internal quotation marks and citations omitted).

⁹ *Albury v. State*, 551 A.2d 53, 59 (Del. 1988).

¹⁰ *Hoskins v. State*, 102 A.3d 724, 730 (Del. 2014) (internal quotation marks and citations omitted).

(7) As a preliminary matter, Sabb has waived any claims that he argued below but did not raise on appeal.¹¹ And the record, including Sabb's representations made on the Truth-in-Sentencing Guilty Plea Form and the transcript of the plea colloquy, supports the Superior Court's finding that Sabb knowingly and intelligently entered a *Robinson* plea to aggravated menacing and PABPP.

(8) Turning to Sabb's ineffective-assistance-of-counsel claims, we find no abuse of discretion in this case. Although the Superior Court incorrectly concluded that the ineffective-assistance claims were procedurally barred under Rule 61(i)(3),¹² it nevertheless proceeded to analyze the merits of Sabb's claims under the *Strickland* framework. We affirm the Superior Court's judgment that Sabb failed to allege sufficient facts establishing that trial counsel's representation fell below an objective standard of reasonableness. Moreover, we note that at no point does Sabb address the second prong of the *Strickland* analysis: Sabb did not allege in the Superior Court and does not allege on appeal that, but for counsel's allegedly deficient performance, he would not have entered a *Robinson* plea and insisted on proceeding to trial. Accordingly, Sabb's ineffective-assistance claims must fail.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is

¹¹ Del. Supr. Ct. R. 14(b)(vi)A.(3); *Ploof v. State*, 75 A.3d 811, 822 (Del. 2013).

¹² See *Green* 238 A.3d at 175 ("Simply put, ineffective-assistance claims are not subject to Rule 61(i)(3)'s bar because they cannot be asserted in the proceedings leading to the judgment of conviction under the Superior Court's rules and this Court's precedent.").

GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ James T. Vaughn, Jr.
Justice