

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM R. TRICE,	§
	§ No. 449, 2012
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for Sussex County
	§
STATE OF DELAWARE,	§ Cr. ID No. 1011016705
	§
Plaintiff Below,	§
Appellee.	§

Submitted: February 11, 2013

Decided: March 5, 2013

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 5th day of March 2013, 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, William R. Trice, appeals from the Superior Court July 16, 2012 order denying his first motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ The plaintiff-appellee, the State of Delaware, moves to affirm the judgment of

¹ Because this was Trice's first postconviction motion and because it contained allegations of ineffective assistance of counsel, the Superior Court requested that Trice's counsel submit an affidavit responding to the allegations. SUPER. CT. CRIM. R. 61(g)(1) and (2); *Horne v. State*, 887 A.2d 973, 975 (Del. 2005) (citations omitted).

the Superior Court on the ground that it is manifest on the face of the appellant's opening brief that this appeal is without merit.² We agree and affirm.

(2) The record before us reflects that, in August 2011, Trice entered *Robinson* pleas³ to one count each of Rape in the Third Degree (as a lesser-included offense of Rape in the First Degree), Strangulation, and Witness Tampering. He was sentenced, based on the State's recommendation, to a total of 35 years of Level V incarceration, with credit for 253 days previously served, to be suspended after 8 years and successful completion of the Family Problems Program, for 1 year of Level IV Home Confinement or Work Release, to be followed by 10 years of Level III probation. This Court affirmed Trice's convictions on direct appeal.⁴

(3) In this appeal from the Superior Court order denying his first postconviction motion, Trice claims that: a) the Superior Court abused its discretion when it denied his claims, b) the prosecutor engaged in misconduct at the preliminary hearing, and c) his counsel provided ineffective assistance.

² SUPR. CT. R. 25(a).

³ *Robinson v. State*, 291 A.2d 279, 281 (Del. 1972).

⁴ *Trice v. State*, Del. Supr., No. 443, 2011, Ridgely, J. (Feb. 7, 2012).

(4) The record before us reflects that Trice's plea colloquy took place on August 3, 2011. The transcript of that colloquy reflects that Trice's counsel confirmed that he and Trice had discussed the case, including the charges and possible sentences, on several occasions. Trice also confirmed that he understood that he faced a sentence of between 2 and 35 years at Level V; that no one had made him any promises about the length of his sentence; that he was satisfied with his counsel's representation; that no one was forcing him to enter a plea; that he was waiving his right to a jury trial; and that he had reviewed, signed, and understood the guilty plea form. At the close of the colloquy, the Superior Court accepted Trice's plea as knowing and voluntary.

(5) In order to prevail on a claim of ineffective assistance in connection with a voluntary *Robinson* plea, the defendant must demonstrate prejudice, or a reasonable probability that, but for his counsel's unprofessional errors, he would not have entered the plea and would have insisted on proceeding to trial.⁵ The defendant must assert, and substantiate, concrete claims of actual prejudice.⁶

⁵ *Albury v. State*, 551 A.2d 53, 60 (Del. 1988).

⁶ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

(6) The transcript of the plea colloquy reflects that Trice thoroughly discussed the implications of his plea with his counsel and was satisfied with his counsel's representation. Because Trice is bound in these proceedings by that representation, we conclude that his claim of ineffective assistance is without merit.⁷ As for Trice's claim of misconduct by the prosecutor at the preliminary hearing, his voluntary *Robinson* plea constituted a waiver of all claims occurring prior to the entry of that plea.⁸ We therefore conclude that Trice's claim of prosecutorial misconduct is also without merit.

(7) In light of all the above, we hold that the Superior Court properly denied Trice's claims. It is manifest on the face of the opening brief that this appeal is without merit.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁷ See *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁸ See *Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988).