

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|---------------------|--------------------------------|
| MICHAEL D. JOHNSON, | § |
| | § |
| Defendant Below- | § No. 456, 1999 |
| Appellant, | § |
| | § |
| v. | § Court Below— Superior Court |
| | § of the State of Delaware, |
| STATE OF DELAWARE, | § in and for New Castle County |
| | § Cr.A. No. IN96-09-1405 |
| Plaintiff Below- | § IN96-09-1407 |
| Appellee. | § |

Submitted: January 26, 2000

Decided: March 24, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **BERGER**, Justices

ORDER

This 24th day of March 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Michael D. Johnson, filed this appeal from an order of the Superior Court denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In July 1998, following jury selection, Johnson pleaded guilty to possession of cocaine and possession of marijuana. All remaining charges, including possession with intent to deliver cocaine, were nolle prossed.

Johnson was sentenced to 5 years imprisonment at Level V, to be suspended for 2 years probation at Level III and 3 years probation at Level II. Johnson did not file a direct appeal of his convictions or sentences.

(3) In this appeal, Johnson asserts that: 1) his defense counsel provided ineffective assistance by refusing to present certain pretrial motions, being unprepared for trial and previously representing one of the State's witnesses, thereby creating a conflict of interest; 2) he was entrapped by the police and the witness for the State; and 3) the Superior Court improperly denied his pretrial motions, thereby limiting his ability to defend himself and coercing his guilty plea. Johnson asks that he be permitted to withdraw his guilty plea.

(4) In order to prevail on his claim of ineffective assistance of counsel, Johnson must show that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.¹ Although not insurmountable, the Strickland

¹*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”²

(5) Johnson’s claim that his counsel provided ineffective assistance is without merit. Based upon our careful review of the record, there is no indication Johnson’s counsel’s representation fell below an objective standard of reasonableness or that any alleged errors changed the outcome of the proceedings.

(6) Johnson’s other claims involve alleged errors that occurred prior to the entry of his guilty plea. A defendant who knowingly and intelligently enters into a plea agreement waives his right to a trial and to attack any alleged defects that preceded the entry of his guilty plea.³ A review of Johnson’s plea colloquy reflects that he pleaded guilty knowingly and intelligently.⁴ As such, Johnson has waived any right to attack alleged defects that preceded the entry of the plea and is bound by the representations made

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

³*Haskins v. State*, Del. Supr., No. 188, 1991, Moore, J., 1991 WL 165563 (Aug. 19, 1991) (ORDER).

⁴Johnson stated on his guilty plea form that he was not satisfied with his attorney’s representation. During his plea colloquy, he stated that he had “misgivings” about his counsel. Those statements do not undermine the remainder of Johnson’s representations, however, which clearly reflect that his guilty plea was knowing and intelligent.

on his signed guilty plea form in the absence of clear and convincing evidence to the contrary.⁵ Even if Johnson's claims of error are considered on the merits, they are unavailing since there is no record evidence to support them.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁵*Somerville v. State*, Del. Supr., 703 A.2d 629, 632 (1997).