

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM T. HARLEY,	§	
	§	
Defendant Below-	§	No. 395, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. No. VN01-01-1731-02
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: January 7, 2005
Decided: March 11, 2005

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

ORDER

This 11th day of March 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, William T. Harley, filed an appeal from the Superior Court's August 16, 2004 order denying his motion to withdraw his guilty plea. We find no merit to the appeal. Accordingly, we affirm.

(2) In May 2001, Harley pleaded guilty to Attempted Robbery in the Second Degree. He was sentenced, pursuant to his plea agreement, to five years of

incarceration at Level V, to be suspended for decreasing levels of probation.¹ Harley did not file a direct appeal.

(3) In June 2002, Harley was found to have committed a violation of probation (“VOP”). His probation was revoked and he was sentenced to five years incarceration at Level V, to be suspended after ninety days for decreasing levels of probation. In October 2003, Harley again was found to have committed a VOP and was sentenced to the Level V Greentree Program, to be suspended after successful completion of the program for two years at Level III probation. Harley did not appeal either VOP sentence.

(4) In February 2004, Harley requested leave to withdraw his guilty plea on the ground that he was innocent and had been coerced into pleading guilty by his attorney. In March 2004, Harley requested that his sentence be modified to permit him to enter the Key Program rather than the Greentree Program. On August 16, 2004, the Superior Court granted Harley’s request for sentence modification, but denied his request to withdraw his guilty plea.

(5) In this appeal, Harley claims that the Superior Court abused its discretion by not permitting him to withdraw his guilty plea because there was no determination by the Superior Court of the factual basis for the plea. He argues

¹ Former Super. Ct. Crim. R. 11(e) (1) (C).

that he checked the box on the guilty plea form indicating that he was not freely and voluntarily entering a plea of guilty and that the Superior Court failed to address him personally to determine the voluntariness of the plea. Harley also contends that his counsel provided ineffective assistance by permitting him to enter an involuntary plea.

(6) The transcript of the May 2001 plea colloquy in the Superior Court reflects that, in exchange for Harley's guilty plea to one count of Attempted Robbery in the Second Degree, the State agreed to dismiss a number of other charges. The transcript also reflects that Harley stated he was not under the influence of drugs or alcohol, had not been coerced into pleading guilty, and was freely and voluntarily entering his plea. Based upon these representations, the Superior Court found that Harley had entered his plea knowingly, intelligently and voluntarily.

(7) In the absence of clear and convincing evidence to the contrary, Harley is bound by the representations he made during his guilty plea colloquy.² While it appears that, on his guilty plea form, Harley checked the box indicating that he had not freely and voluntarily decided to plead guilty, it appears that Harley did not check that box intentionally. The transcript clearly indicates that Harley's

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

plea was voluntarily entered. Moreover, the transcript does not support Harley's claims that the Superior Court failed to establish a factual basis for the plea and failed to address him personally to establish the voluntariness of the plea. Finally, we find no evidence to support Harley's claim that his attorney provided ineffective assistance.³

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.⁴

BY THE COURT:

/s/ Randy J. Holland
Justice

³ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁴ Because the transcript of the plea colloquy has been transcribed, Harley's November 3, 2004 motion for a transcript of the plea colloquy is denied as moot.