

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL C. HAMBY,	§
	§ No. 222, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. Nos. IN04-02-0174
	§ IN04-02-2221
Plaintiff Below-	§
Appellee.	§

Submitted: August 30, 2005  
Decided: October 31, 2005

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

**ORDER**

This 31st day of October 2005, 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, Daniel C. Hamby, filed an appeal from the Superior Court’s May 2, 2005 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 judgment of the Superior Court on the ground that it is manifest on the face of Hamby’s opening brief that the appeal is without merit. We agree and affirm.

(2) In 2004, Hamby pleaded guilty to Felony Shoplifting and an unrelated charge of Felony Driving Under the Influence (“DUI”). On the shoplifting conviction, he was sentenced to eighteen months incarceration at Level V. On the DUI conviction, he was sentenced to five years incarceration at Level V, to be suspended after six months for decreasing levels of probation. Hamby did not file a direct appeal of his convictions and sentences.

(3) In this appeal, Hamby claims that: a) his guilty plea was coerced because his counsel failed to investigate the wholesale value of the shoplifted goods in order to determine whether he should have been charged with a misdemeanor rather than a felony;<sup>1</sup> b) his guilty plea was coerced because his counsel erroneously told him he was subject to sentencing as an habitual offender; c) his eighteen-month sentence was improper because it exceeded the SENTAC<sup>2</sup> guidelines and was greater than his co-defendant’s sentence; and d) the Superior Court abused its discretion by denying his motion for postconviction relief.

(4) Hamby’s first two claims are that his counsel’s ineffective assistance resulted in a coerced guilty plea. In order to prevail on a claim of

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<sup>1</sup> Hamby was charged with a felony rather than a misdemeanor because the retail value of the shoplifted goods exceeded \$1,000. Del. Code Ann. tit. 11, § 840(d) (2001).

<sup>2</sup> SENTAC stands for Sentencing Accountability Commission.

ineffective assistance of counsel in the context of an allegedly coerced guilty plea, a defendant must show that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that he would not have pleaded guilty, but would have insisted on proceeding to trial.<sup>3</sup> A defendant asserting a claim of ineffective assistance is required to make concrete allegations of cause and actual prejudice or risk summary dismissal.<sup>4</sup>

(5) Hamby has demonstrated neither cause nor actual prejudice with respect to his first claim of ineffective assistance. While he contends that the wholesale, rather than the retail, value of the shoplifted goods should have been utilized to determine whether he would be charged with a felony or a misdemeanor, he cites no legal support for that contention. Under Delaware law, whenever the value of property is determinative of a defendant's guilt, "value means the market value of the property at the time and place of the crime."<sup>5</sup> There was, thus, no basis for Hamby's counsel to object to Hamby being charged with a felony and no prejudice to Hamby.

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<sup>3</sup> *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

<sup>4</sup> *Younger v. State*, 580 A.2d 552, 556 (1990).

<sup>5</sup> Del. Code Ann. tit. 11, § 224(1) (2001).

(6) Hamby also has failed to demonstrate cause and actual prejudice with respect to his second claim of ineffective assistance. The transcript of the sentencing hearing reflects that, in accordance with the original plea agreement, Hamby was to be sentenced on the shoplifting conviction as a habitual offender. During the course of the sentencing hearing, however, the Superior Court judge noticed that the State had failed to support its request that Hamby be declared a habitual offender with the requisite number of predicate offenses. After a sidebar discussion with counsel, the judge told Hamby that he would not be sentenced as a habitual offender. Hamby's attorney stated for the record that this did not "change [Hamby's] decision to go forward with this plea." In the absence of any showing of prejudice, we also find Hamby's second claim of ineffective assistance to be without merit.

(7) Hamby's claim that his sentence is illegal because it exceeds the SENTAC guidelines also is without merit. It is well-settled that the Superior Court's deviation from the non-binding SENTAC guidelines does not, in and of itself, constitute a valid basis for appealing a sentence.<sup>6</sup> There also is no basis for Hamby's complaint that his co-defendant received a

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<sup>6</sup> *Mayes v. State*, 604 A.2d 839, 846 (Del. 1992).

lesser sentence, since Hamby, unlike his co-defendant, had several prior felony convictions and violations of probation on his record.

(8) Hamby's final claim that the Superior Court abused its discretion by denying his motion for postconviction relief is equally unavailing. Our review of the record reveals no error or abuse of discretion on the part of the Superior Court.

(9) It is manifest on the face of Hamby's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent judicial discretion is implicated, clearly 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