

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSHUA N. HACKETT,	§
	§
Defendant Below-	§ No. 583, 2005
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0110001893
Plaintiff Below-	§
Appellee.	§

Submitted: March 31, 2006

Decided: June 12, 2006

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 12th day of June 2006, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Joshua Hackett, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. We find no merit to the issues raised in Hackett's opening brief. Accordingly, we affirm the judgment of the Superior Court.

(2) The record reflects that Hackett and his brother/co-defendant, Adam Hackett, went to trial in November 2002 on six counts of first degree robbery and related crimes. During opening statements, the Superior Court declared a mistrial. Thereafter, the State made a "wired" plea offer, which

required both brothers to plead guilty to two counts of first degree robbery and one count of possession of a deadly weapon. The plea offer required each to serve a minimum of six years incarceration. On November 18, 2002, after discussions with their respective trial counsel, each brother pled guilty in accordance with the plea agreement. In January 2003, prior to his sentencing, Hackett filed a motion to withdraw his guilty plea. In March 2003, he filed a motion seeking to dismiss his trial counsel. The Superior Court allowed Hackett's trial counsel to withdraw his representation and appointed substitute counsel to represent Hackett. Through his new counsel, Hackett withdrew his request seeking to withdraw his guilty plea.

(3) Consequently, on July 11, 2003, the Superior Court sentenced Hackett, in accordance with his plea agreement, to a total period of fifteen years at Level V incarceration to be suspended after serving thirteen years for probation. Hackett did not appeal. Instead, in July 2004, Hackett filed a motion for postconviction relief complaining about his court-appointed counsel. After receiving responses from the State and both of Hackett's court-appointed attorneys, the Superior Court denied the motion for postconviction relief on its merits. This appeal followed.

(4) In his opening brief on appeal, Hackett raises the following four issues: (i) the Superior Court erred by failing to obtain, in open court,

Hackett’s personal waiver of the pursuit of his motion to withdraw his guilty plea; (ii) his trial counsel was ineffective because he had a conflict of interest, which led to Hackett’s coerced guilty plea; (iii) his trial counsel was ineffective for failing to properly inform him about the “Rule 11 sentencing procedures;” and (iv) his substitute counsel was ineffective for failing to assist Hackett to withdraw his guilty plea and for “failing to investigate available supporting evidence.”

(5) Hackett’s first claim is that the Superior Court was required to obtain, on the record, his “waiver of his right to withdraw his guilty plea.” Contrary to his contention, however, Hackett had no “right” to withdraw his guilty plea. Superior Court Criminal Rule 32 provides that the Superior Court *may* permit withdrawal of a guilty plea prior to sentencing “upon a showing by the defendant of any fair and just reason.” Accordingly, the decision to grant a motion to withdrawal a guilty plea rests within the sound discretion of the Superior Court.¹ Hackett’s reliance on *Webster v. State*,² therefore, is unavailing. *Webster* holds that the trial court must personally address the defendant before accepting a defendant’s waiver of his fundamental constitutional trial rights.³ In this case, counsel’s withdrawal of

¹ *Wells v. State*, 396 A.2d 161 (Del. 1978)

² 604 A.2d 1364 (Del. 1992).

³ *Id.* at 1366-67.

Hackett's motion is not equivalent to the waiver of a fundamental constitutional right. Moreover, the sentencing transcript reflects that defense counsel, in Hackett's presence, explained to the Superior Court the reasons for withdrawing the motion and Hackett's agreement to withdraw the motion. Under the circumstances, the Superior Court was well within its discretion to accept counsel's withdrawal of Hackett's motion. Consequently, Hackett's first claim is without merit.

(6) Hackett's remaining three claims all challenge the effective assistance of his court-appointed attorneys. To support a claim of ineffective assistance of counsel, Hackett must demonstrate that (a) his counsel's conduct fell below an objective standard of reasonableness; and (b) there is a reasonable probability that, but for his counsel's errors, he would not have pled guilty but would have insisted on going to trial.⁴ A defendant asserting a claim of ineffective assistance is required to make concrete allegations of cause and actual prejudice to substantiate a claim of ineffective assistance of counsel or else risk summary dismissal.⁵ Although not insurmountable, there is a strong presumption that counsel's representation was professionally reasonable.⁶

⁴ *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

⁵ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

⁶ *Albury v. State*, 551 A.2d 53, 59 (Del. 1988).

(7) After considering Hackett's motion, as well as the responses from both of Hackett's court-appointed attorneys and the State, the Superior Court concluded that there was no merit to Hackett's claim that his counsel had a conflict or that he was coerced into accepting the plea offer and had mistakenly pled guilty based on his counsel representation that he would receive a particular sentence. The Superior Court noted that Hackett, under oath, stated that his decision to plead guilty was made knowingly and voluntarily and that he was satisfied with his counsel's performance. He also stated under oath that no promises had been made to him and that he understood the total sentence for his offenses ranged from six to sixty years. Absent clear and convincing evidence to the contrary, we find no error in the Superior Court's conclusion that Hackett was bound by his representations made under oath.⁷

(8) Having carefully considered the parties' respective positions, we find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned decision dated November 15, 2005. The Superior Court did not err in concluding that Hackett's claims lacked merit. Accordingly, we find no abuse of discretion

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

in the Superior Court's summary disposition of Hackett's petition without holding a hearing.⁸

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁸ See *Maxion v. State*, 686 A.2d 148, 151 (Del. 1996).