

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER J. DAVIS,	§
	§ No. 597, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0505010323
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 24, 2006

Decided: June 12, 2006

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

ORDER

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

(1) The defendant-appellant, Christopher J. Davis, filed an appeal from the Superior Court’s November 9, 2005 order 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 June 2005, Davis was charged with Arson in the Second Degree, Driving Under the Influence of Alcohol and/or Drugs (“DUI”), Offensive Touching, Terroristic Threatening, Criminal Mischief, Disorderly Conduct, Resisting Arrest and Carrying a Concealed Deadly Instrument.

Davis pleaded guilty to the lesser-included charge of Reckless Burning and the charges of DUI (4th offense), Offensive Touching and Terroristic Threatening. All of the remaining charges were dismissed. Davis was sentenced to a total of 6 years and 7 months of Level V incarceration, to be suspended after 6 months and successful completion of the Key Program for 1 year at Level IV Residential Substance Abuse Treatment Program and, upon successful completion of that program, for 3 years at Level III probation.

(3) In this appeal, Davis claims that he received ineffective assistance of counsel in connection with his guilty plea. Specifically, he argues that his counsel failed to communicate with him, failed to conduct a pretrial investigation, misinformed him about the length of the Key Program and violated attorney/client privilege by communicating with his mother, all of which led to his coerced guilty plea.

(4) In order to prevail on a claim of ineffective assistance of counsel in connection with a guilty plea, a defendant must show that, but for his counsel's unprofessional errors, he would not have pleaded guilty but would have insisted on proceeding to trial.¹ The defendant must make

¹ *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

concrete allegations of actual prejudice and substantiate them, or risk summary dismissal.²

(5) Davis has presented no evidence to support his claim that but for unprofessional errors on the part of his counsel he would not have pleaded guilty and would have insisted on proceeding to trial. The transcript of the plea colloquy reflects that Davis' guilty plea was knowing and voluntary and that he was satisfied with his counsel's performance. When the Superior Court judge asked if this was "[his] personal decision to wrap it all up today," Davis replied, "Yes. Thank you for that opportunity." In the absence of clear and convincing evidence to the contrary, Davis is bound by those representations.³ Moreover, Davis' guilty plea provided him with a clear benefit. The sentencing judge observed that Davis was facing a sentence of over 9 years at Level V on all of the charges against him. By pleading guilty, Davis received a Level V sentence that was suspended after only 6 months.

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

BY THE COURT:
/s/ Myron T. Steele
Chief Justice

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

³ *Somerville v. State*, 703 A.2d 629, 631-32 (Del. 1997).