

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
v.) I.D. No. IN98-08-0970
) 9807021744
CLIFF A. BASS)
 Defendant.)

Submitted: March 20, 2002
Decided: June 12, 2002

UPON DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
MOTION **DENIED**.

This 12th day of June 2002, having considered Defendant’s Cliff Bass’s motion for postconviction relief and the record in the case, the Court concludes that Defendant is not entitled to relief for the reasons explained below.

(1) On November 9, 1998, Defendant entered a guilty plea to Trafficking in Cocaine (over 100 grams) pursuant to Rule 11(e)(1)(c). He was sentenced to 18 years at Level V, suspended after 15 years, followed by various periods of probation. He was fined \$400,000.00, but the fine was suspended.

(2) On November 9, 2001, Defendant filed a motion for postconviction relief, pursuant to Super.Ct.Crim.R. 61 (Rule 61). As grounds for relief, he raises the issue of ineffective assistance of counsel, alleging that defense counsel failed to (1) file a motion to suppress, (2) investigate the facts of his case and (3) advise him that he might be fined.

(3) Defendant's motion is not subject to any of Rule 61's procedural bars because a claim of ineffective assistance of counsel cannot be raised for the first time on appeal and is properly brought in a postconviction motion.¹ However, when a defendant voluntarily takes a guilty plea, he waives any objection to defects or error that occurred prior to entry of the plea.² Thus Defendant's first two contentions are waived if he voluntarily pled guilty to the trafficking charge.

(4) At the guilty plea hearing, the Court engaged Bass in a thorough colloquy to determine whether that he was entering the plea knowingly and voluntarily.³ Defendant expressed satisfaction with defense counsel's performance, indicated that he knew that he was giving up certain trial rights, showed an understanding of the 15 to 30 year sentence that he

¹*Wright v. State*, 513 A.2d 1310, 1315 (Del.1986).

²*Somerville v. State*, 703 A.2d 629, 632 (1997); *Wells v. State*, 396 A.2d 16 (Del.1978).

³Super.Ct.Crim.R. 11(c). *See also Sullivan v. State*, 636 A.2d 931, 937 (Del.1994) *cert. denied*, 513 U.S. 833 (1994).

faced, and denied any coercion in taking the plea.⁴ Bass's answers on his guilty plea form were consistent with his responses during the colloquy. Based on Bass's responses, the judges presiding over the hearing found that the plea was made knowingly and voluntarily.

(5) Absent clear and convincing evidence to the contrary, Defendant is bound by his in-court statements and by his signed guilty plea form.⁵ Defendant does not argue that his statements during the colloquy were false or that his answers on the plea form were untrue or otherwise unreliable. This Court finds no reason to overturn the hearing judge's finding that Defendant entered his plea knowingly and voluntarily.⁶ He has therefore waived objection to any errors that allegedly occurred prior to the plea and is not entitled to relief on his claims that defense counsel failed to file a suppression motion or investigate his case.

(6) Defendant also alleges that defense counsel was constitutionally ineffective for failing to inform him that his sentence might include a fine. This issue is moot because the fine was suspended. Even if it had not been suspended, a defendant contemplating entry of a guilty plea must be informed of anything that is part of the "mandatory minimum penalty

⁴Transcript of Guilty Plea Proceedings (11/9/98) at XX.

⁵*Fullman v. State*, 560 A.2d 490 (Del.1989)(ORDER).

⁶Tr. at 8.

provided by law.⁷ The fine imposed in this case was discretionary and not mandated by law.

For the foregoing reasons, Defendant's motion for postconviction relief is **DENIED**.

IT IS SO ORDERED

PEGGY L. ABLEMAN

cc: Prothonotary
Stuart Sklut, Esquire, DAG
Andrew G. Ahern, III, Esquire

⁷Rule 11(c)(1). *See also Barkley v. State*, 724 A.2d 558 (Del.1999)(holding that automatic revocation of driving privileges imposed as a result of a conviction of certain drug offenses is a "direct penal consequence" of a guilty plea to such offenses and must be communicated to a defendant prior to entry of a guilty plea).