

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIAN CAMMILE,	§	
	§	No. 481, 2007
Defendant Below-	§	
Appellant,	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID Nos. 0506014175
	§	0506016607
Plaintiff Below-	§	0504006752
Appellee.	§	

Submitted: April 15, 2008

Decided: April 30, 2008

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

ORDER

This 30th day of April 2008, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Brian Cammile, filed an appeal from the Superior Court's August 15, 2007 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ We find no merit to the appeal. Accordingly, we affirm.

(2) In February 2006, Cammile entered a Robinson plea² to two counts of Burglary in the Second Degree, two counts of Conspiracy in the Second Degree, one

¹ The Superior Court analyzed Cammile's claims regarding his sentences under Rule 61 rather than Rule 35(b), since a Rule 35(b) motion would have been untimely.

² *Robinson v. State*, 291 A.2d 279 (Del. 1972).

count of Unlawful Use of a Credit Card in Excess of \$1000, and one count of Felony Theft.³ On the burglary convictions, he was sentenced as a habitual offender to a total of 16 years of Level V incarceration. On the conspiracy convictions, he was sentenced to a total of 4 years at Level V, to be suspended for 2 years at Level III probation. On the unlawful use of a credit card conviction, he was sentenced to 2 years at Level V, to be suspended for 6 months at Level IV, to be followed in turn by 6 months at Level III. Finally, on the felony theft conviction, Cammile was sentenced to 2 years at Level V, to be suspended for 1 year at Level III. Cammile did not appeal his convictions or sentences.

(3) In this appeal from the Superior Court's denial of his motion for postconviction relief, Cammile claims that a) the Superior Court improperly sentenced him without taking account of his mental health evaluations; b) the prosecutor used disparaging language at the sentencing hearing, thereby violating his due process rights; c) he was improperly deprived of a habitual offender status hearing; and d) his counsel provided ineffective assistance by failing to properly inform him about the State's position on sentencing.

(4) Cammile's first three claims are without any factual or legal support. The transcript of the sentencing hearing reflects that Cammile's counsel discussed Cammile's two mental health evaluations extensively with the Superior Court prior to

³ Cammile originally was charged in three indictments with thirty-two felonies and twenty-six misdemeanors.

the imposition of sentence. The transcript of the sentencing hearing further reflects that the prosecutor did not “disparage” Cammile, but simply offered a possible explanation for the differences between the two mental health evaluations. Finally, the transcript of Cammile’s plea colloquy, as well as his written plea agreement, reflect that Cammile admitted his eligibility for habitual offender status, confirmed that he had not been promised any definite sentence, and had voluntarily entered into the plea agreement. As such, Cammile waived any right to a separate habitual offender hearing.⁴ We, therefore, conclude that the Superior Court’s denial of Cammile’s first three claims must be affirmed, albeit on grounds different from those relied upon by the Superior Court.⁵

(5) Cammile’s final claim is that his attorney provided ineffective assistance by failing to properly inform him about the State’s position on sentencing. In order to prevail on a claim of ineffective assistance in connection with a guilty plea, a defendant must demonstrate that, but for his counsel’s unprofessional errors, he would not have pleaded guilty, but would have insisted on proceeding to trial.⁶ The defendant must make concrete allegations of actual prejudice, and substantiate them, or risk summary dismissal.⁷ The transcript of the plea colloquy reflects that Cammile’s counsel told the judge that he had discussed the range of possible sentences, including a life sentence, with Cammile. Moreover, the judge had a lengthy colloquy with Cammile in which he

⁴ *Parker v. State*, Del. Supr., No. 244, 2000, Veasey, C.J. (July 26, 2000).

⁵ *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

⁶ *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

⁷ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

again explained the range of possible sentences for the charges. In the absence of any evidence that Cammile was unaware of the range of possible sentences for the charges to which he was pleading guilty, we conclude that this claim, too, is unavailing.⁸

(6) In his reply brief, Cammile developed an additional claim that his sentencing was “fundamentally unfair” and his attorney ineffective because one of the convictions upon which his habitual offender status was based was factually unsupported. As requested by this Court, the State responded to this claim on April 15, 2008. Contrary to Cammile’s claim, the record reflects that, at the time Cammile was sentenced, he had pleaded guilty to three predicate offenses that qualified him for habitual offender status.⁹ As such, we conclude that Cammile’s claim that there were insufficient grounds to support his habitual offender status is without merit.

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁸ We also note that, while it is preferable for the Superior Court to obtain defense counsel’s affidavit in response to a defendant’s initial claim of ineffective assistance, Super. Ct. Crim. R. 61(g) (2), it was not error for the Superior Court to rule on Cammile’s ineffectiveness claim without such an affidavit, since the claim was based upon a factual assertion that was clearly refuted by the record.

⁹ Del. Code Ann. tit. 11, § 4214(a).