

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JERMAINE ROGERS,	§	
	§	No. 474, 2002
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in
	§	Cr. A. Nos. IS99-09-0829,
STATE OF DELAWARE,	§	0830; IS99-10-0249 - 0252.
	§	
Plaintiff Below,	§	
Appellee.	§	
	§	Def. ID No. 9909019687
		Submitted: February 24, 2003
		Decided: April 29th, 2003

Before **WALSH, HOLLAND** and **BERGER**, Justices.

ORDER

This 29th day of April 2003, upon consideration of the appellant's opening brief and appendix and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Jermaine Rogers, filed this appeal from an order of the Superior Court denying his motion for postconviction relief. The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the basis that it is manifest on the face of Rogers' opening brief that the appeal is without merit. We agree and AFFIRM. (2) On November 19, 1999, the State filed a twenty-eight count indictment against Rogers, his brother Christopher Rogers, and another co-defendant named

Christopher Purnell. On March 27, 2000, the morning of his trial and after the jury was sworn, Jermaine Rogers pleaded guilty to two counts each of Robbery in the First Degree and Possession of a Firearm during the Commission of a Felony, and one count each of Possession of a Firearm by a Person Prohibited, and Conspiracy in the Second Degree. Rogers was sentenced on May 26, 2000, to a total of thirty-nine years at Level V, suspended after serving nineteen years and upon successful completion of the Level V Key Program, for twenty-two years of decreasing levels of supervision. Rogers did not appeal from the guilty plea or the sentence.

(3) On May 17, 2002, Rogers filed a motion for postconviction relief. By order dated June 26, 2002, the Superior Court summarily denied Rogers' motion. On August 8, 2002, after hearing testimony from Rogers' former counsel, the Superior Court denied Rogers' motion for reargument. This appeal followed.

(4) In his opening brief on appeal, Rogers argues, as he did in his motion for postconviction relief and motion for reargument,¹ that his guilty plea was involuntary due to ineffective assistance of counsel.² Rogers claims

¹ Rogers' postconviction motion and motion for reargument were nearly identical to those that were filed by his co-defendant and brother, Christopher Rogers. *See State v. Christopher Rogers*, Cr. ID No. 9909019686.

² Rogers does not pursue his claim of an "unconstitutional lineup." Rogers' failure to brief the issue constitutes a waiver of the claim, and the claim will not be addressed by this Court. *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

that his counsel was not prepared for trial, never discussed the evidence with him, and never advised him of the “severe and direct consequences” of pleading guilty.

(5) To prevail on a claim of ineffective assistance of counsel, a defendant must show that (i) counsel’s representation fell below an objective standard of reasonableness, and (ii) the deficiencies in counsel’s representation caused the defendant actual prejudice.³ In the context of a guilty plea, a defendant must demonstrate “that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted upon going to trial.”⁴

(6) The Court has carefully considered Rogers’ postconviction claims on appeal, and we find that the judgment of the Superior Court should be affirmed on the basis of the Superior Court’s well-reasoned decision dated June 26, 2002. Rogers’ allegation, that his guilty plea was involuntary due to ineffective assistance of counsel, is contradicted by the Truth-in-Sentencing Guilty Plea Form and by Rogers’ statements at the plea colloquy. In both, Rogers represented to the Superior Court that he voluntarily entered his plea and was satisfied with his counsel’s

³ *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

⁴ *Albury v. State*, 551 A.2d 53, 60 (Del. 1988) (quoting *Hill v. Lockhart*, 474 U.S. 52, 58 (1985)).

representation. Moreover, Rogers acknowledged that he understood that a pre-sentence investigation would be performed, and that the sentencing judge could impose a sentence up to ninety years in prison. In the absence of clear and convincing evidence to the contrary, Rogers is bound by his answers on the guilty plea form and by his sworn testimony prior to the acceptance of his guilty plea.⁵ Rogers has not sustained his burden of demonstrating that his counsel rendered ineffective assistance of counsel.

(7) It is manifest on the face of Rogers' opening brief that this appeal is without merit. The issues presented on appeal clearly are controlled by settled Delaware law. To the extent judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁵ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).