

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| FREDERICK B. DONOHUE, | § |
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| Defendant Below- | § No. 602, 2008 |
| Appellant, | § |
| | § |
| v. | § Court Below—Superior Court |
| | § of the State of Delaware, |
| STATE OF DELAWARE, | § in and for Sussex County |
| | § Cr. ID 0703025024 |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: March 31, 2009

Decided: May 5, 2009

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

ORDER

This fifth day of May 2009, upon consideration of the opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Frederick Donohue, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Donohue's opening brief that his appeal is without merit. We agree. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Donohue was arrested in March 2007, for an incident of domestic violence involving his wife and two daughters.

After his arrest, his daughters reported to authorities that Donohue had abused them sexually over the course of many years. He was indicted on 153 charges. In October 2007, he pled no contest to one count of Rape in the Second Degree and two counts of Continuous Sexual Abuse of a Child. He also pled guilty to one count each of Aggravated Menacing and Reckless Endangering in the First Degree. The Superior Court sentenced Donohue, in accordance with his plea agreement, to seventy-two years at Level V imprisonment to be suspended after serving twenty-three years in prison for one year at Level IV home confinement and ten years of probation. Donohue did not appeal. Instead, he filed a motion for postconviction relief in October 2008, arguing that his trial counsel was ineffective, the prosecutor engaged in misconduct, and his sentence was excessive. The Superior Court denied his motion. This appeal followed.

(3) In his opening brief on appeal, Donohue contends that the Superior Court abused its discretion in denying postconviction relief. Donohue asserts that his guilty plea was involuntary because: (i) his counsel was ineffective for failing to investigate his case and prepare a defense; (ii) the prosecutor engaged in misconduct and coerced him into pleading guilty; and (iii) the sentence imposed by the Superior Court was not the sentence

Donohue agreed to; therefore, Donohue contends that the plea agreement must have been altered after he signed it.

(4) This Court reviews the Superior Court's denial of postconviction relief for abuse of discretion.¹ To prevail on a claim of ineffective assistance of counsel in the case of a guilty plea, a defendant must establish that (i) his trial counsel's representation fell below an objective standard of reasonableness; and (ii) but for counsel's unprofessional errors, he would not have pled guilty but would have insisted on going to trial.² The defendant must set forth and substantiate concrete allegations of actual prejudice.³ Moreover, there is a "strong presumption" that counsel's representation was professionally reasonable.⁴

(5) In this case, the Superior Court concluded that Donohue's claim that his counsel was ineffective was wholly unsubstantiated and was contradicted by Donohue's own sworn statements during the plea colloquy. The Court also concluded that Donohue's claim of prosecutorial misconduct and coercion was procedurally barred because Donohue could have raised a claim on direct appeal but did not. Finally, the Superior Court concluded that

¹ *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

² *Albury v. State*, 551 A.2d 53, 58-59 (Del. 1988) (citing *Hill v. Lockhart*, 474 U.S. 52 (1985)). See also *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

³ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

⁴ *Strickland v. Washington*, 466 U.S. at 689.

Donohue's sentencing claim was not appropriate for a Rule 61 petition, but further stated that the claim failed on its merits because the sentence imposed by the Superior Court was the exact sentence the court discussed with Donohue on the record during the plea colloquy and the exact terms to which Donohue agreed to be sentenced.

(6) We agree. During the plea colloquy, counsel reviewed the State's evidence, which included the testimony of Donohue's two daughters. Donohue acknowledged that he was pleading no contest to the three sexual offenses because he did not want to go to trial on the 139 counts of sexual offenses charged in the indictment and risk having a jury believe his daughters' testimony. He further acknowledged that he was pleading guilty to the remaining offenses because he, in fact, was guilty. He also acknowledged that he had a history of depression for which he was treated with medication. He stated that he only took the prescribed dosage and that the medication did not affect his ability to understand the plea proceeding. The Superior Court specifically found that Donohue was competent to enter a plea and that his plea was entered knowingly, intelligently, and voluntarily. The trial court reviewed the sentence with Donohue, and Donohue acknowledged it was the sentence he agreed to in his plea form. Donohue

also stated under oath that no one had coerced him into entering a plea and that he was satisfied with his counsel's representation.

(7) Under these circumstances, we find no abuse of the Superior Court's discretion in denying Donohue's postconviction motion. In the absence of clear and convincing evidence to the contrary, Donohue is bound by the answers on his guilty plea form and his sworn statements to the judge during the plea colloquy.⁵

NOW, THEREFORE, IT IS ORDERED that 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).