

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HUEY TIMMONS,	§
	§
Defendant Below-	§ No. 102, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN01-10-1404
Plaintiff Below-	§ IN01-10-1407
Appellee.	§

Submitted: July 11, 2003
Decided: September 23, 2003

Before **HOLLAND, STEELE** and **JACOBS**, Justices

ORDER

This 23rd day of September 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Huey Timmons, filed an appeal from the Superior Court's January 23, 2003 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 and his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In October 2001, Timmons was indicted on three counts of Robbery in the Second Degree and one count of Wearing a Disguise During the Commission of a Felony. In June 2002, Timmons pleaded guilty to a single count

each of second degree robbery and wearing a disguise. He was sentenced on those charges to a total of 8 years incarceration at Level V, to be suspended after 6 years for decreasing levels of probation.¹

(3) In this appeal, Timmons claims that: a) his sentence is illegal because it exceeds the sentence agreed to in the plea agreement as well as the Truth in Sentencing (“TIS”) guidelines; b) his guilty plea was coerced because the prosecutor and defense counsel led him to believe the TIS guidelines would be followed and the judge failed to establish that he understood the nature of the plea and its consequences; and c) his counsel provided ineffective assistance by failing to investigate mitigating evidence with respect to his character and background and by failing to explain fully the nature of the charges to which he was pleading guilty.

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence “at any time.” “The ‘narrow function of Rule 35 is to permit correction of an illegal sentence, not to re-examine errors occurring at the trial or other proceedings prior to the imposition of sentence.’”² “Relief under Rule 35(a) is available ‘when the sentence imposed exceeds the statutorily-imposed limits, [or] violates the

¹The sentencing order reflects that, at that time, Timmons was also given a 2-year Level V sentence for Driving Under the Influence (IN02-05-0659).

²*Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

Double Jeopardy Clause”³ “A sentence is also illegal if it ‘is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to the substance of the sentence, or is a sentence which the judgment of conviction did not authorize.’”⁴

(5) Timmons does not contend that his sentences exceed the statutorily-imposed limits, violate double jeopardy, or are ambiguous or contradictory. All of his claims regarding his sentences implicate the proceedings leading up to the imposition of the sentences. As such, he is not entitled to relief pursuant to Rule 35(a). Even if viewed on their merits, Timmons’ claims regarding his sentences are unavailing, since the TIS guidelines are voluntary and non-binding⁵ and the record does not reflect that the State breached any promise with respect to Timmons’ sentences.

(6) Timmons’ next claim, that his plea was involuntary, is refuted by the record. While Timmons checked the box on his guilty plea form indicating that he had been promised a specific sentence, the transcript of the plea colloquy clearly reflects that Timmons understood that the State had made no promise

³Id.

⁴Id.

⁵*Mayes v. State*, 604 A.2d 839, 845 (Del. 1992).

concerning his sentence, that the State was not recommending any particular sentence, that he was facing two possible 5-year sentences, and that neither a sentence recommendation by the State nor the TIS guidelines would bind the Court in passing sentence.⁶ The transcript reflects that Timmons understood the nature of the plea and its consequences, understood that he was waiving his right to an appeal, was satisfied with the representation provided by his counsel, and he knowingly and intelligently entered the plea. Absent clear and convincing evidence to the contrary, Timmons is bound by the representations he made at the time the plea was entered.⁷ To the extent Timmons' claims implicate events that occurred prior to the entry of the plea, his voluntary guilty plea serves as a waiver of any such claims.⁸

(7) In order for Timmons to prevail on his final claim of ineffective assistance of counsel, he must show that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would

⁶The transcript reflects that Timmons responded "No, sir" when the Superior Court asked him if the State had made any promises to induce him to enter the plea. The transcript also reflects that he twice responded "Yes, sir" when the Superior Court asked him if he understood that "[he was] facing a total of ten years in prison," "the State has not said what it is going to recommend," and "the Court will not be bound by the [TIS] Guidelines and the Court will not be bound by the State's recommendation."

⁷*Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁸*Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988).

have been different.⁹ In order to prevail on his claim that his counsel was ineffective in connection with the entry of his guilty plea, Timmons must show that, but for his counsel's unprofessional errors, he would not have pleaded guilty but would have insisted on proceeding to trial.¹⁰

(8) Timmons' claim of ineffective assistance of counsel is without merit. In exchange for Timmons' guilty plea, the State dismissed two serious felony charges against him, thereby providing him with a substantial benefit. There is no evidence that, but for errors on the part of his counsel, Timmons would not have pleaded guilty but would have insisted on proceeding to trial. There is, moreover, no evidence in the record that any action on the part of Timmons' counsel, either in connection with the guilty plea or otherwise, resulted in prejudice to Timmons.

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

BY THE COURT:

/s/ Myron T. Steele
Justice

⁹*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

¹⁰*Somerville v. State*, 703 A.2d at 631.

