

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARTHUR DAY,	§
	§
Defendant Below-	§ No. 478, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
STATE OF DELAWARE,	§ for New Castle County
	§ Cr. ID Nos. 0710015842
Plaintiff Below-	§
Appellee.	§

Submitted: June 10, 2011  
Decided: August 17, 2011

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 17<sup>th</sup> day of August 2011, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Arthur Day, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. After careful review, we find no merit to the issues Day has raised on appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Day was arrested in October 2007 and indicted on charges of possession with intent to deliver cocaine, maintaining a vehicle for keeping cocaine and third degree criminal trespass. As a result of these criminal charges, Day also was charged with violating a prior probationary sentence. In

December 2007, Day was found guilty of the VOP and sentenced to eleven months at Level V incarceration with no probation to follow. Thereafter, on March 27, 2008, Day pled guilty to one count of maintaining a vehicle. The Superior Court sentenced Day as an habitual offender on June 13, 2008 to five years at Level V incarceration. Day did not perfect a timely appeal from his sentence.<sup>1</sup> In January 2010, Day filed a motion for postconviction relief, which the Superior Court denied.<sup>2</sup> This appeal followed.

(3) Day raises three issues in his opening brief on appeal. First, he contends that the Superior Court erred in denying his motion for postconviction relief without making adequate findings of fact. Second, Day argues that he received ineffective assistance from his trial counsel. Third, he contends that his Fourth Amendment rights were violated when his probation officer violated procedure and became a “stalking horse” for the police, resulting in an illegal search of his vehicle.

(4) At the heart of all of Day’s claims is his contention that the search of his vehicle was illegal. The record reflects the following events surrounding Day’s arrest and the subsequent search of his vehicle: Day was on probation on October 12, 2007. A Delaware State police officer saw a blue Suburban with its engine running parked in the lot of an apartment complex. The officer ran the tags,

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<sup>1</sup> *Day v. State*, 2008 WL 4946207 (Del. Nov. 20, 2008).

<sup>2</sup> *State v. Day*, 2010 WL 2861852 (Del. Super. July 8, 2010).

discovered the vehicle was registered to Day, and learned that Day had an outstanding warrant against him. The officer spoke with a man standing near the vehicle. The man identified himself as Day. The officer arrested him pursuant to the warrant and then, knowing Day was on probation, called probation officers, who conducted an administrative search of the vehicle and discovered cocaine inside of it.

(5) With respect to his claim that counsel was ineffective for failing to file a motion to suppress based on an illegal search and for coercing him into pleading guilty, Day must demonstrate that: (a) counsel's conduct fell below an objective standard of reasonableness; and (b) there is a reasonable probability that, but for counsel's errors, Day would not have pled guilty but would have insisted on going to trial.<sup>3</sup> A defendant must make concrete allegations of cause and actual prejudice to substantiate a claim of ineffective assistance of counsel.<sup>4</sup>

(6) In response to Day's claim of ineffective assistance, counsel responded in his affidavit that, following the testimony given at the VOP hearing, counsel determined that there was no legal basis to file a motion to suppress because Day's vehicle was properly subject to an administrative search, a search incident to arrest,

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<sup>3</sup> *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

<sup>4</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1980).

and an inventory search.<sup>5</sup> In reviewing Day's claim of ineffectiveness, the Superior Court concluded, and we agree, that counsel's decision not to file a suppression motion was supported by the record and that counsel's performance was well within the standards of reasonableness.

(7) Furthermore, Day's contention that his attorney coerced him into pleading guilty is contradicted by the guilty plea colloquy. During his guilty plea hearing, Day, while dissatisfied with his attorney's refusal to file a suppression motion, stated that no one had made any promises or threats in order to coerce him to plead guilty. Day stated under oath that he was pleading guilty because he was, in fact, guilty of the charged offense. In the absence of clear and convincing evidence to the contrary, Day is bound by these statements.<sup>6</sup> We thus reject Day's claim that his guilty plea was involuntary due to his counsel's ineffective assistance.

(8) Because we find that Day entered his guilty plea knowingly, intelligently, and voluntarily, we do not consider further his challenge to the legality of the search. A voluntary guilty plea waives any claims of errors

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<sup>5</sup> We note that counsel filed an appeal from the VOP proceeding at Day's request. Counsel then moved to withdraw and filed a no merit brief pursuant to Supreme Court Rule 26(c). Day was given the opportunity but failed to raise any issue for the Court's consideration in that appeal. *Day v. State*, 2008 WL 2212896 (Del. May 29, 2008).

<sup>6</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

occurring prior to the entry of the plea.<sup>7</sup> Day, through his voluntary plea, has waived his right to raise that argument now.

(9) Finally, we find no merit to Day's contention that the Superior Court did not make adequate findings of fact in its decision denying Day's motion for postconviction relief. In response to Day's motion, the Superior Court requested trial counsel's affidavit and also received Day's reply to the affidavit. The Superior Court had sufficient information to rule upon Day's motion, and its findings of fact and conclusions of law are supported by the record. The Superior Court was not required, as Day seems to suggest, to hold an evidentiary hearing on his motion.<sup>8</sup>

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>7</sup> See *Benge v. State*, 945 A.2d 1099, 1201 (Del. 2008) ("Under Delaware law, a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea...").

<sup>8</sup> Del. Super. Ct. Crim. R. 61(h)(3) (2011).