

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SEAN D. PROSPERO,	§	
	§	No. 15, 2001
Defendant Below,	§	
Appellant,	§	Court Below – Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County in S00-03-
	§	0091 & 0100.
STATE OF DELAWARE	§	
	§	
Plaintiff Below,	§	Def. ID No. 0002013092
Appellee.	§	

Submitted: June 28, 2001

Decided: August 14, 2001

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

**ORDER**

This 14<sup>th</sup> day of August 2001, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court:

(1) On April 6, 2000, Sean D. Prospero was charged by Information with ten offenses stemming from an attempted robbery. The charges were resolved on August 3, 2000, when Prospero pleaded guilty, pursuant to Superior Court Criminal Rule 11(e)(1)(c) ("Rule 11(e)(1)(c)"), to two of the charges, *to wit*, Attempted Robbery in the First Degree and Conspiracy in the Second Degree. Prospero was sentenced to a total of 12

years at Level V, suspended after two years and upon successful completion of the Key Program, for one year at Level IV Crest, followed by Crest Aftercare and probation at Levels III and II.

(2) On August 30, 2000, Prospero filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). Prospero claimed (i) “Illegal Detention and/or Arrest”<sup>1</sup>; (ii) “Suppression of Favorable Evidence”<sup>2</sup>; and (iii) various allegations of “Ineffective Counsel/Coerced Guilty Plea.”<sup>3</sup> During the course of the postconviction proceeding, Prospero also claimed that the Superior Court imposed a sentence that “went outside the plea agreement.” Furthermore, Prospero contended that he was entitled to, but did not receive, the same plea and sentence that was negotiated by his co-defendant.<sup>4</sup>

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<sup>1</sup> Specifically Prospero alleged that he was not brought before a magistrate, as required by Superior Court Criminal Rule 5(a).

<sup>2</sup> Prospero alleged that witnesses, who were interviewed by his counsel a week before trial, provided exculpatory information that should have been included in the police report.

<sup>3</sup> Prospero alleged that his counsel (i) failed to file motions on his behalf; (ii) failed to respond to his letters; (iii) was unfamiliar with the basic facts and circumstances of his case; (iv) made misleading statements at the guilty plea hearing; and (v) said nothing at sentencing when the judge committed error.

<sup>4</sup> After cooperating with the police, Prospero’s co-defendant, Christopher Pennington, pleaded guilty to Attempted Robbery in the Second Degree, a lesser-included offense, and Conspiracy in the Second Degree. Pennington was sentenced to seven years at Level V, suspended for nine months at a Level IV residential substance abuse treatment program and probation. *State v. Pennington*, Del. Super., Cr.A. No. PS00-03-0079I, Bradley, J. (Oct. 5, 2000).

(3) The Superior Court held an evidentiary hearing. At the conclusion of the evidentiary hearing, the Superior Court denied postconviction relief. This appeal followed.

(4) The record does not support Prospero's claim that his counsel was ineffective. Counsel disputes the allegations of ineffectiveness in her Rule 61(g)(2) affidavit, and there is no evidence in the record that counsel's performance fell below an objective standard of reasonableness or prejudiced Prospero.<sup>5</sup>

(5) Moreover, the record does not support Prospero's claim that his guilty plea was coerced or was otherwise involuntary. To the contrary, the guilty plea form and plea colloquy reflect that Prospero freely and voluntarily entered a plea of guilty. Prospero stated that he was not coerced into accepting the plea, and that he was satisfied with the representation provided by his counsel. In the absence of clear and convincing evidence to the contrary, Prospero is bound by his answers on the guilty plea form and by his sworn testimony prior to the acceptance of

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<sup>5</sup> See *Somerville v. State*, Del. Supr., 703 A.2d 629, 631 (1997) (citations omitted) (providing that in the context of a guilty plea, the defendant must demonstrate that, but for counsel's alleged errors, the defendant would not have pleaded guilty and would have insisted on going to trial).

his guilty plea.<sup>6</sup> Prospero's voluntary plea of guilty constitutes a waiver of any alleged defects or errors occurring before the entry of the plea.<sup>7</sup>

(6) A Rule 11(e)(1)(c) plea agreement is also binding on the Superior Court, once the agreement is accepted.<sup>8</sup> In this case, the parties' plea agreement accepted by the court provided that, upon completion of Level IV Crest, the balance of Level IV would be suspended for "*L3 Crest Aftercare, then 3 years L3.*"<sup>9</sup> At sentencing, however, the Superior Court sentenced Prospero to "[f]our years Level 3, with Crest Aftercare to follow."<sup>10</sup> Because it appears that the Superior Court imposed a Level III probationary term in excess of what was contemplated by the plea agreement, this matter will be remanded to the Superior Court to correct the sentence.

(7) It is manifest on the face of Prospero's opening brief that the appeal is without merit. The issues raised on appeal are clearly controlled by settled Delaware law, and to the extent the issues on appeal implicate the exercise of judicial discretion, there was no abuse of discretion.

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<sup>6</sup> *Id.* at 632.

<sup>7</sup> *Downer v. State*, Del. Supr., 543 A.2d 309 (1988).

<sup>8</sup> *Manis v. State*, Del. Supr., No. 148, 2000, Holland, J., 2001 WL 256232, (Mar. 13, 2001) (ORDER).

<sup>9</sup> See *State v. Prospero*, Del. Super., Cr.A. No. S00-03-0091, at Docket No. 14 (Aug. 3, 2000) (plea agreement) (emphasis added).

<sup>10</sup> See Guilty Plea Hr'g Tr., Aug. 3, 2000, at 9 (emphasis added) and corresponding sentencing order.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED, except that this matter is REMANDED with directions to correct Prospero's sentence in accordance with this decision. Jurisdiction is not retained.

BY THE COURT

/s/ Randy J. Holland  
Justice