

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEVEN J. LUCAS,	§	
	§	
Defendant Below-	§	No. 91, 2003
Appellant,	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr.A. Nos. IN96-06-0192
Plaintiff Below-	§	IN96-07-1824
Appellee.	§	IN96-06-0185
	§	IN96-06-1334

Submitted: August 15, 2003

Decided: August 20, 2003

Before **VEASEY**, Chief Justice, **HOLLAND** and **STEELE**, Justices

ORDER

This 20th day of August 2003, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Steven J. Lucas, pleaded guilty to Attempted Assault in the First Degree, Possession of a Firearm During the Commission of a Felony, Assault in the Second Degree and Possession of a

Deadly Weapon During the Commission of a Felony.¹ He was sentenced to a total of 43 years incarceration at Level V, to be suspended after 37 years for decreasing levels of probation. Lucas did not file a direct appeal from his convictions or sentences. This is Lucas' appeal of the Superior Court's denial of his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.²

(2) The transcript of Lucas' May 5, 1997 guilty plea hearing reflects that two deputies from the Attorney General's Office appeared for the State. The first deputy, who apparently was filling in temporarily for the deputy assigned to Lucas' case, read the plea agreement into the record and noted that the State would dismiss the remaining charges and recommend a presentence investigation. Lucas' public defender then began speaking. It appears that, at some point during the public defender's remarks, the deputy assigned to Lucas' case took over for the first deputy, since the hearing

¹Lucas originally entered a guilty plea on April 8, 1997. The prosecutor subsequently became aware that Lucas had two prior felony convictions and would be exposed to a 5-year, rather than a 3-year, minimum mandatory sentence on each of his weapon charges (two charges of possession of a firearm during the commission of a felony). Lucas was permitted to withdraw his guilty plea. At a final case review on May 5, 1997, one of the weapon charges was reduced to possession of a deadly weapon during the commission of a felony and Lucas entered the instant plea.

²The Superior Court appointed counsel to represent Lucas in connection with his postconviction motion. The Superior Court issued two separate decisions on the motion—the first denied Lucas' ineffective assistance of counsel claims and the second denied Lucas' other postconviction claims and his motions to expand the record and for an evidentiary hearing.

transcript reflects no further involvement by the first deputy. In the colloquy conducted by the judge, Lucas stated that he had read the plea agreement and guilty plea form and understood them, was not under the influence of drugs or alcohol, had committed the crimes to which he was pleading guilty, and was entering his pleas knowingly and voluntarily.

(3) On July 27, 1999, in connection with postconviction proceedings in the Superior Court, Lucas filed a motion for the appointment of counsel. The Superior Court granted the motion and directed that a contract attorney be assigned to the case.³ The contract attorney, who had recently left the Attorney General's Office, was the same individual who had substituted for the deputy assigned to Lucas' case at his guilty plea hearing. After reviewing the record in this case and recognizing the potential conflict of interest, this Court requested that counsel file supplemental memoranda. In a supporting affidavit filed by Lucas' appointed counsel, he states that he discussed the issue of a potential conflict of interest with Lucas at the time he was appointed by the Superior Court and that Lucas waived any potential

³Lucas claimed that the public defender who represented him at the guilty plea hearing provided ineffective assistance due to a conflict of interest. The facts showed that the public defender had represented one of the investigating police officers in a real estate settlement. On October 5, 2000, the Superior Court denied Lucas' claim because there was no showing of prejudice.

conflict.⁴ In response to a subsequent request from this Court, Lucas' counsel also supplied Lucas' written waiver.

(4) Lucas' counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and (b) the Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.⁵

(5) Lucas' counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Lucas' counsel informed Lucas of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Lucas also was informed of his right to supplement his attorney's presentation. Lucas responded with a brief that

⁴Lucas did not raise the issue of a potential conflict of interest involving his appointed counsel as one of his points in this appeal.

⁵*Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

raises four issues for this Court's consideration. The State has responded to the position taken by Lucas' counsel as well as the issues raised by Lucas and has moved to affirm the Superior Court's judgment.

(6) Lucas raises four issues for this Court's consideration. He claims that: a) the State improperly charged him with the second weapon offense; and b) the public defender who represented him at the guilty plea hearing, first, failed to present an appropriate mitigation argument, second, failed to file a direct appeal, and, third, failed to file a pretrial motion to suppress evidence. To the extent Lucas has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court.⁶ We will also address the issue we raised sua sponte concerning a possible conflict of interest due to Lucas' appointed counsel's prior involvement on behalf of the State at Lucas' guilty plea hearing.

(7) Lucas' claim that the State improperly charged him and sentenced him on the second weapon offense is without merit. Lucas appears to argue that the Superior Court incorrectly sentenced him for

⁶*Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his postconviction motion in the Superior Court, Lucas argued that the public defender who represented him at his guilty plea hearing provided ineffective assistance by coercing him into pleading guilty, failing to conduct an adequate investigation, and failing to file appropriate motions. Lucas also argued that the confession he gave to the police was coerced and that his sentence was illegal.

Possession of a Firearm During the Commission of a Felony after the charge had been reduced to Possession of a Deadly Weapon During the Commission of a Felony. He further appears to argue that his sentence for the second weapon offense improperly exceeded the statutory minimum. While the transcripts of the guilty plea and the sentencing reflect some confusion concerning the criminal action numbers assigned to the two charges, the record does not reflect any confusion concerning the nature of the two separate weapon charges to which Lucas pleaded guilty and for which he was sentenced.⁷ Moreover, while the deadly weapon charge carried a statutory minimum sentence of 2 years in prison, the statutory maximum sentence was 20 years, a fact acknowledged by Lucas at his guilty plea hearing. Lucas' sentence of 10 years in prison clearly was within the statutory range.⁸

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

⁷DEL. CODE ANN. tit. 11, §§ 1447, 1447A.

⁸*Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989).

the proceedings would have been different.⁹ In order to prevail on his claims of ineffective assistance of counsel in connection with his guilty plea, Lucas 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

(9) We find Lucas' ineffective assistance of counsel claims to be without merit, since he has failed to show, with respect to any of those claims, that any alleged error on the part of his public defender resulted in prejudice to him. Moreover, to the extent Lucas bases his claims on an allegedly involuntary guilty plea, that allegation is refuted by the transcript of the guilty plea hearing. Absent clear and convincing evidence to the contrary, Lucas is bound by the representations he made at the time the plea was entered.¹¹ To the extent Lucas bases his claims on alleged defects occurring prior to the entry of the plea, his voluntary guilty plea forecloses any such argument.¹²

(10) Finally, based upon Lucas' written waiver of any potential conflict of interest, we conclude that there is no basis for a claim of

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

¹⁰*Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

¹¹*Id.* at 632.

¹²*Downer v. State*, 543 A.2d 309, 311-12 (Del. 1988).

ineffective assistance of counsel due to a conflict of interest stemming from Lucas' appointed counsel's prior involvement at the guilty plea hearing.¹³

(11) This Court has reviewed the record carefully and has concluded that Lucas' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Lucas' counsel has made a conscientious effort to examine the record and has properly determined that Lucas could not raise a meritorious claim in this appeal.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

¹³*Lewis v. State*, 757 A.2d 709, 714 (Del. 2000).