

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BERSALINDO VALASQUEZ,	§
	§
Defendant Below-	§ No. 122, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. Nos. S99-05-0187
Plaintiff Below-	§ S99-05-0188
Appellee.	§

Submitted: April 30, 2001

Decided: June 21, 2001

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

**ORDER**

This 21<sup>st</sup> day of June 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 that:

(1) The defendant-appellant, Bersalindo Valasquez, filed this appeal from an order of the Superior Court denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The State of Delaware has moved to affirm the judgment of the Superior Court on the ground that it

is manifest on the face of Valasquez' opening brief that the appeal is without merit.<sup>1</sup> We agree and AFFIRM.

(2) In this appeal, Valasquez claims that the failure of the arresting officer to advise him of his right to contact the Mexican Embassy pursuant to Article 36 of the 1963 Vienna Convention on Consular Relations violated his due process rights, thereby tainting the entire process by which he was convicted and sentenced.

(3) In June 1999, Valasquez was charged with Rape in the First Degree and Kidnaping in the Second Degree. In February 2000, Valasquez moved to suppress evidence of the crimes based in part on his contention that his due process rights were violated when he was not given an opportunity to contact the Mexican embassy at the time of his arrest. Valasquez entered a plea of guilty on the same morning his motions to suppress were scheduled to be heard by the Superior Court.

(4) In March 2000, Valasquez entered a Robinson plea<sup>2</sup> to charges of Rape in the Second Degree and Kidnaping in the Second Degree. He was

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<sup>1</sup>Supr. Ct. R. 25(a).

<sup>2</sup>*Robinson v. State*, Del. Supr., 291 A.2d 279 (1972) (permitting the acceptance by the trial court of a guilty plea in the absence of an admission of guilt). The plea was entered pursuant to Super. Ct. Crim. R. 11(e) (1) (C).

sentenced to 10 years incarceration at Level V on the rape charge and 2 years incarceration at Level V on the kidnaping charge. Because Valasquez spoke Spanish, a Spanish interpreter assisted him with his Truth in Sentencing Guilty Plea form (which was translated into Spanish) and simultaneously translated into Spanish his plea colloquy with the Superior Court. Valasquez did not file a direct appeal from his convictions or sentences.

(5) Valasquez' claim that his due process rights were violated is unavailing. Valasquez' guilty plea form and his plea colloquy, both of which were translated into Spanish,<sup>3</sup> reflect that his guilty plea was entered voluntarily. Valasquez' voluntary guilty plea constitutes a waiver of any alleged defects or errors occurring prior to the entry of the plea, including his instant claim.<sup>4</sup> Even if Valasquez had not waived his claim of a due process violation, the claim fails for lack of a sufficient factual basis in any case, since Valasquez has not identified "the specific due process rights denied to him by

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<sup>3</sup>There is no contention, nor does the record reflect, that the court interpreter failed to carry out her duties in accordance with the procedures adopted by this Court for court interpreters in Administrative Directive No. 107, Supreme Court of Delaware (Apr. 4, 1996).

<sup>4</sup>*Downer v. State*, Del. Supr., 543 A.2d 309, 311-12 (1988). Notably, the transcript of the plea colloquy reflects that Valasquez understood there were several pre-trial motions scheduled to be heard the morning he entered his guilty plea and he further understood that, by entering his guilty plea, he was waiving his right to have those motions decided by the Superior Court.

the police officers' alleged failure to inform him of his Article 36 entitlement and has failed to explain how the [Mexican] Consulate could have assisted his defense in any way.”<sup>5</sup>

(6) It is manifest on the face of Valasquez' opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey  
Chief Justice

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<sup>5</sup>*Barrow v. State*, Del. Supr., 749 A.2d 1230, 1242 (2000).