

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARCO VASQUEZ,	§
	§
Defendant Below-	§ No. 290, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. 98-01-0317 R2
Plaintiff Below-	§ 98-02-1488 R2
Appellee.	§

Submitted: September 28, 2001

Decided: November 5, 2001

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

ORDER

This 5th day of November 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Marco Vasquez, filed an appeal from the May 23, 2001 order of the Superior Court denying his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we **AFFIRM**.

(2) In this appeal, Vasquez claims that the Superior Court improperly denied his postconviction motion on procedural grounds¹ because the arresting officer's failure to contact the Mexican Embassy² rendered his guilty plea involuntary and violated his due process rights, resulting in a "miscarriage of justice."³ Vasquez also claims that his counsel provided ineffective assistance.

(3) In October 1998, Vasquez pleaded guilty to Murder in the Second Degree and Possession of a Firearm During the Commission of a Felony. In December 1998 he was sentenced to 17 years incarceration at Level V for the murder conviction and to 3 years and 6 months incarceration at Level V, to be suspended after 3 years for 6 months probation at Level III, for the weapon conviction. Vasquez did not file an appeal from his convictions or sentences.

(4) Vasquez' claim that the Superior Court improperly denied his motion on procedural grounds is without merit. Vasquez' claims of an involuntary guilty plea and a due process violation were procedurally barred because they were not

¹The Superior Court denied Vasquez' first postconviction motion because his claims were not asserted in the proceedings leading to the judgment of conviction. Super. Ct. Crim. R. 61(i) (3). The Superior Court also determined that the lack of consular notification did not implicate a constitutional right and, therefore, review was not warranted pursuant to Super. Ct. Crim. R. 61(i) (5). Vasquez did not appeal this decision of the Superior Court.

²Pursuant to Article 36 of the Vienna Convention on Consular Relations.

³Super. Ct. Crim. R. 61(i) (5).

raised in the proceedings leading to the judgment of conviction⁴ and because they were formerly adjudicated in a previous postconviction motion.⁵ There was, furthermore, no cause for relief from the procedural default and no prejudice from a violation of Vasquez’ rights,⁶ and reconsideration of the claim was not warranted in the interest of justice.⁷ The record reflects that Vasquez’ guilty plea was entered voluntarily. His voluntary guilty plea constitutes a waiver of any alleged defects or errors occurring prior to the plea, including his claim of a due process violation.⁸ Even if Vasquez had not waived this claim, it fails for lack of a sufficient factual basis, since Vasquez has not identified “the specific due process rights denied to him by the . . . 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.”⁹ In the absence of any evidence of a “miscarriage of justice,” the Superior Court committed no legal error or abuse of discretion in summarily denying Vasquez’ motion on procedural grounds.

⁴Super. Ct. Crim. R. 61(i) (3).

⁵Super. Ct. Crim. R. 61(i) (4).

⁶Super. Ct. Crim. R. 61(i) (3) (A) and (B).

⁷Super. Ct. Crim. R. 61(i) (4).

⁸*Downer v. State*, Del. Supr., 543 A.2d 309, 311-12 (1988).

⁹*Barrow v. State*, Del. Supr., 749 A.2d 1230, 1242 (2000).

(5) Vasquez' claim of ineffective assistance of counsel is also without merit. In order to prevail on this claim, Vasquez must show that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's professional errors, he would not have pleaded guilty but would have insisted on proceeding to trial.¹⁰ Vasquez has provided no factual support for his claim that unprofessional errors on the part of his counsel were prejudicial to him.

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

BY THE COURT:

/s/ Myron T. Steele
Justice

¹⁰*Albury v. State*, Del. Supr., 551 A.2d 53, 58 (1988) (citing *Strickland v. Washington*, 466 U.S. 668, 694 (1984)).