

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY V. PIERCE,	§
	§
Defendant Below-	§ No. 66, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN98-02-1743RI
Plaintiff Below-	§
Appellee.	§

Submitted: September 28, 2001

Decided: November 5, 2001

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

**ORDER**

This 5<sup>th</sup> 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, Gregory V. Pierce, filed an appeal from the January 31, 2001 order of the Superior Court denying his 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, Pierce claims that: a) his counsel provided ineffective assistance by failing to investigate his case, inform him of the consequences of his plea and present mitigating evidence at sentencing, thereby rendering his

guilty plea involuntary; b) the Superior Court improperly imposed a sentence that was outside the plea agreement and the TIS guidelines, improperly relied on inaccurate information in the Presentence Report and failed to advise him of the consequences of his plea; c) the prosecutor engaged in misconduct by failing to comply with his request for discovery, harassing him with a duplicate indictment and the threat of enhanced punishment and making a sentence recommendation in violation of his promise not to do so; and d) the Superior Court abused its discretion by denying him a transcript of his guilty plea.<sup>1</sup>

(2) In February 1998 Pierce was indicted on 5 counts of Unlawful Sexual Intercourse in the Third Degree.<sup>2</sup> Pursuant to a plea agreement with the State, Pierce pleaded guilty in July 1998 to 1 count of Sexual Intercourse in the Third Degree in exchange for which the State dismissed the remaining counts of the indictment.<sup>3</sup> In January 1999, the Superior Court sentenced Pierce to 10 years imprisonment at Level V, to be suspended after 5 years for decreasing levels of probation. Pierce did not file an appeal from his conviction or sentence.

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<sup>1</sup>This claim is moot since the plea colloquy was transcribed and is contained in the record.

<sup>2</sup>11 Del. C. § 773.

<sup>3</sup>Pierce was also allowed to plead guilty to a Class C Felony, as opposed to a Class B Felony as was contained in the indictment.

After filing several unsuccessful motions for modification of sentence, Pierce filed the instant motion for postconviction relief.

(3) Pierce's claim of ineffective assistance of counsel is without merit. In the context of a guilty plea, a defendant has the burden of showing that, but for his counsel's deficient performance, he would not have pleaded guilty and would have insisted on proceeding to trial.<sup>4</sup> Pierce's conclusory allegations concerning his counsel's performance fail to satisfy this burden. The plea agreement provided Pierce with a clear benefit since, if convicted on all 5 counts of the indictment, he faced a maximum prison term of 100 years. Moreover, Pierce admitted during his plea colloquy that he committed the offense to which he was pleading guilty and that he was satisfied with his counsel's representation. In the absence of clear and convincing evidence to the contrary, Pierce is bound by the representations made on his guilty plea form and during his plea colloquy.<sup>5</sup>

(4) Pierce's claims of abuse of discretion by the Superior Court and prosecutorial misconduct are procedurally barred because they were not raised previously in the proceedings leading to the judgment of conviction<sup>6</sup> and Pierce has failed to show either cause for relief from the procedural default or prejudice

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<sup>4</sup>*Albury v. State*, Del. Supr., 551 A.2d 53, 60 (1988).

<sup>5</sup>*Somerville v. State*, Del. Supr., 703 A.2d 629, 632 (1997).

from a violation of his rights.<sup>7</sup> Pierce's claims are unsupported by the record in any case.

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

BY THE COURT:

/s/ Myron T. Steele  
Justice

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<sup>6</sup>Super. Ct. Crim. R. 61(i) (3).

<sup>7</sup>Super. Ct. Crim. R. 61(i) (3) (A) and (B).