

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES E. KNOX,	§
	§
Defendant Below-	§ No. 150, 2003
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr.A. No. PK00-09-0030
	§ Cr. ID 0008001802
Plaintiff Below-	§
Appellee.	§

Submitted: May 6, 2003
Decided: June 17, 2003

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

ORDER

This 17th day of June 2003, upon consideration of the opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, James E. Knox, filed this appeal from the Superior Court's denial of his petition for postconviction relief. The State of Delaware has filed a motion to affirm the Superior Court's judgment on the ground that it is manifest on the face of Knox's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Knox was arrested for acts of sexual abuse involving his minor step-daughter. Knox gave a statement to the police confessing to the alleged acts and later pled guilty, pursuant to

Superior Court Criminal Rule 11(e)(1)(C),¹ in February 2001 to one count of second degree unlawful sexual intercourse. The Superior Court immediately sentenced Knox, in accordance with his plea agreement, to twenty years at Level V incarceration, to be suspended after serving ten years minimum mandatory for ten years at decreasing levels of supervision. The transcript of the plea colloquy reflects that Knox was specifically advised that he would serve the entire minimum mandatory portion of his sentence in prison and that he would not be eligible for probation or parole or good time during that ten-year period. Knox did not appeal from his sentencing.

(3) In April 2001, Knox filed a motion to withdraw his guilty plea, which was denied as untimely. Thereafter, Knox filed a petition for postconviction relief in January 2002. The Superior Court referred the matter to a Superior Court Commissioner for recommendation. The Commissioner issued a report, which recommended denying Knox's petition for postconviction relief. Knox appealed the Commissioner's decision to a Superior Court judge. After conducting a de novo review, the Superior Court adopted the Commissioner's report and recommendation and denied Knox's petition. This appeal followed.

¹ Rule 11(e)(1)(C) was repealed effective July 1, 2001.

(4) Knox's opening brief on appeal raises numerous arguments that appear to fall into two discernible categories. The first set of complaints challenge the performance of his trial counsel. Knox contends that his trial counsel was ineffective for failing to investigate and interview witnesses and for giving him bad advice, which led to Knox entering a coerced guilty plea. The second set of complaints challenge the conduct of the police. Knox essentially contends that the arresting officer told Knox if he admitted the allegations, the police would release him. Knox contends that after he confessed, the police released him only to re-arrest him the following day. As a result of this alleged misconduct, Knox asserts that his arrest was illegal, and his confession was coerced. Knox also contends that he asked to speak with his wife (who had reported her daughter's allegations about Knox's abuse) during the police interrogation. Knox asserts that this request was tantamount to an invocation of his constitutional right to counsel. The State has moved to affirm the Superior Court's denial of postconviction relief.

(5) Having carefully considered the parties' respective positions, we find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's order dated February 26, 2003, which adopted the Commissioner's well-reasoned report dated November 8,

2002. The Superior Court did not err in concluding that Knox had failed to meet the two-part test of *Strickland v. Washington*² for establishing ineffective assistance of counsel. Having concluded that Knox's guilty plea was knowing, voluntary, and intelligent and was not the product of ineffective assistance of counsel, it is clear that Knox's remaining claims about his arrest and confession were waived by the entry of his plea.³

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

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

² 466 U.S. 668, 688, 693-94 (1984).

³ *See Downer v. State*, 543 A.2d 309, 312 (1988) (holding that, through a voluntary and intelligent plea, defendant forfeited the right to challenge underlying infirmity in the charge).