

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERIC AMARO,	§
	§
Defendant Below-	§ No. 7, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. PN00-02-1198 R1
Plaintiff Below-	§
Appellee.	§

Submitted: April 16, 2003

Decided: June 9, 2003

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

**ORDER**

This 9<sup>th</sup> day of June 2003, 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, Eric Amaro, filed an appeal from the Superior Court's December 18, 2002 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellant, the State of Delaware, has moved to affirm the Superior Court's judgment on the

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

(2) In March 2000, Amaro was charged with multiple counts of Rape in the Second Degree and Unlawful Sexual Contact in the Second Degree. In August 2000, Amaro pleaded guilty to one lesser-included count of Rape in the Third Degree. He was sentenced to 15 years incarceration at Level V, to be suspended after 5 years for probation. Amaro filed a direct appeal of his conviction and sentence, which was dismissed by this Court as untimely.<sup>2</sup>

(3) In this appeal, Amaro claims that: a) his attorney provided ineffective assistance due to a conflict of interest and by failing to investigate the disclosure of Amaro's confidential statement to a public health worker; b) his guilty plea was involuntary; c) the State failed to turn over exculpatory evidence; d) his statement to a public health worker was confidential and should not have been disclosed; e) he is "actually innocent" of the rape charge; and f) the Superior Court improperly denied his request for transcripts at State expense. In a document filed in response

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<sup>1</sup>SUPR. CT. R. 25(a).

<sup>2</sup>*Amaro v. State*, Del. Supr., No. 588, 2000, Berger, J. (Mar. 6, 2001). This Court noted that Amaro could pursue a claim that his untimely appeal was attributable to his counsel through the postconviction process, but Amaro has not pursued that claim in this proceeding.

to the State's motion to affirm, Amaro also claims that he is entitled to an evidentiary hearing with respect to his ineffective assistance of counsel claim.<sup>3</sup>

(4) In order to prevail on his claim of ineffective assistance of counsel, Amaro must show that, but for his counsel's unprofessional errors, he would not have pleaded guilty to the charge of rape but would have insisted on proceeding to trial.<sup>4</sup> We have reviewed carefully the record in this case, including the transcript of the plea colloquy, and there is no evidence that any errors on the part of Amaro's counsel resulted in the entry of his guilty plea. Therefore, this claim is without merit.

(5) Amaro's next claim is that his guilty plea was involuntary. The transcript reflects that the Superior Court judge explained to Amaro that he did not have to accept the State's plea offer, and that, if he did not, the case would be scheduled for trial. The judge then afforded Amaro and his counsel additional time to discuss how Amaro wanted to proceed. After counsel informed the judge that Amaro wanted to enter the plea, the judge proceeded with the colloquy, ascertaining that Amaro had attended the University of Delaware for a year and a half, understood the terms of the plea agreement and the guilty plea form, was not under the influence of drugs, and was voluntarily waiving his right to a trial. At

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<sup>3</sup>The Court has considered this claim even though Amaro was not requested to file a response to the State's motion to affirm. SUPER. CT. R. 25(a).

<sup>4</sup>*Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

one point, Amaro stated “I don’t have enough money to compete with the State.”

The judge then stated as follows: “If you are not satisfied with your attorney, I would appoint a Public Defender and the case would be scheduled for trial . . . .”

In response, Amaro stated: “I understand, yes.” Amaro also confirmed that he had been afforded sufficient time to carefully review the plea with his counsel.

(6) The transcript of the plea colloquy refutes Amaro’s claim that his plea was involuntary. While displaying some initial hesitation, Amaro ultimately determined that the State’s offer of a plea to one lesser-included rape charge, with the remainder of the charges dismissed, was in his best interest and knowingly and intelligently accepted it. Absent clear and convincing evidence to the contrary, Amaro is bound by the representations he made at the time the plea was entered.<sup>5</sup>

(7) Amaro’s next claims are that the State failed to turn over exculpatory evidence, his statement to the public health worker was confidential and he is “actually innocent” of the rape charge. A defendant who voluntarily enters a plea of guilty waives his right to present evidence in his defense at a trial and to attack any alleged defects that preceded the entry of his guilty plea.<sup>6</sup> Because Amaro’s plea was entered voluntarily, he has waived his right to pursue these claims.

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<sup>5</sup>*Id.* at 632.

<sup>6</sup>*Downer v. State*, 543 A.2d 309, 311-12 (Del. 1988).

(8) Amaro’s claim that he was entitled to transcripts at State expense is unavailing. Amaro requested transcripts of three proceedings—the plea colloquy, the preliminary hearing and the sentencing hearing. The record reflects that Amaro was provided a copy of the transcript of his plea colloquy, but does not reflect that a preliminary hearing ever took place. Amaro is not entitled to a transcript of the sentencing hearing because he has failed to demonstrate how the transcript would assist him in this appeal.<sup>7</sup>

(9) Amaro’s final claim is that he is entitled to an evidentiary hearing on his claim of ineffective assistance of counsel. The record does not indicate that a motion for an evidentiary hearing was presented to the Superior Court in the first instance. To the extent that Amaro argues that the Superior Court should have sua sponte scheduled such a hearing, there is no basis for that claim. The Superior Court’s December 18, 2002 order dismissed Amaro’s postconviction claims “summarily” and we find no error or abuse of discretion in the Superior Court’s determination to proceed in that fashion.<sup>8</sup> (10) It is manifest on the face of Amaro’s 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.

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<sup>7</sup>*U.S. v. MacCollum*, 426 U.S. 317, 330 (1976).

<sup>8</sup>SUPER. CT. CRIM. R. 61(h).

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

BY THE COURT:

/s/ Myron T. Steele  
Justice