

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER J. VIDETTO,	§
	§
Defendant Below-	§ No. 714, 2002 and 8, 2003
Appellant,	§ CONSOLIDATED
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. Nos. IK02-01-0407; 0410
Plaintiff Below-	§ 0412
Appellee.	§

Submitted: June 9, 2003

Decided: July 18, 2003

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

ORDER

This 18th day of July, 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, Christopher J. Videtto, filed an appeal from the Superior Court's December 17, 2002 sentencing order and its December 27, 2002 order denying his petition for a writ of habeas corpus.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgments on the ground that it is manifest on the face of

¹On May 7, 2003, following a hearing in Superior Court, this Court granted Videtto's motion to proceed pro se on appeal and his motion to consolidate his two appeals.

Videtto's opening brief that the appeal is without merit.² We agree and affirm.

(2) The grand jury indicted Videtto on several criminal charges relating to a residential burglary. On December 17, 2002, during the second day of trial, Videtto pleaded guilty as an habitual offender³ to Burglary in the Second Degree, Conspiracy in the Second Degree and Theft of a Firearm. He was sentenced to a total of 20 years incarceration at Level V, to be suspended after 15 years for 1½ years of decreasing levels of probation. Videtto subsequently filed a petition for a writ of habeas corpus, which was denied by the Superior Court on December 27, 2002.

(3) In this consolidated appeal, Videtto raises nine claims that can fairly be summarized as follows: a) he was coerced by the police, the Superior Court, the prosecution and his own counsel into pleading guilty; b) he should not have been declared an habitual offender in the absence of evidence to support that finding and because he had been extradited from another state; and c) his counsel provided ineffective assistance by permitting him to plead guilty as an habitual offender. Videtto offers no

²SUPR. CT. R. 25(a).

³DEL. CODE ANN. tit. 11, § 4214(a) (2001).

argument concerning the Superior Court's denial of his petition for a writ of habeas corpus.

(4) Videtto's claim that his guilty plea was involuntary is refuted by the record. The plea agreement, the guilty plea form and the transcript of the plea colloquy all clearly reflect that Videtto understood the nature of the plea and its consequences, understood that he was waiving his right to an appeal, was satisfied with the representation provided by his counsel and knowingly and intelligently entered the plea. Absent clear and convincing evidence to the contrary, Videtto is bound by the representations he made at the time the plea was entered.⁴ To the extent Videtto claims that he was "coerced" into pleading guilty because of events that occurred prior to the entry of the plea, that claim is also without merit. A voluntary guilty plea serves as a waiver of any such claim of error.⁵

(5) Videtto's claim that his habitual offender status was improperly accepted by the Superior Court in the absence of any evidence of past convictions is without merit. Videtto agreed during the guilty plea proceedings that he qualified for habitual offender status. The plea agreement contained the stipulation that Videtto was an habitual offender.

⁴*Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁵*Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988).

Moreover, following the plea colloquy, the Superior Court conducted a hearing on Videtto's status as an habitual offender. The judge listed three prior New Jersey convictions and asked Videtto, "Are these convictions accurate . . . ?" Videtto replied, "Yes, sir." Videtto, thus, voluntarily admitted to the accuracy of the judge's recitation of his past convictions and to his status as an habitual offender.

(6) Videtto's claim that he could not be sentenced as an habitual offender because he had been extradited from another state also is without merit. The Superior Court has discretion to sentence an extradited defendant as an habitual offender⁶ and there is no evidence in the record that the Superior Court abused its discretion in sentencing Videtto.

(7) Videtto claims that his counsel provided ineffective assistance by permitting him to plead guilty. This Court will not consider claims of ineffective assistance of counsel that are raised for the first time on direct appeal.⁷ Accordingly, we decline to review this claim.

(8) Videtto's appeal from the Superior Court's denial of his petition for a writ of habeas corpus is also before us for review. Because Videtto has failed to provide any argument relating to the claim, however, he has waived

⁶DEL. CODE ANN. tit. 11, § 2549; *Harris v. State*, Del. Supr., No. 457, 1999, Hartnett, J. (May 23, 2000) (citing *Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992)).

⁷*Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986).

his right to pursue it in this appeal.⁸ The claim is without merit in any case, since there is no evidence in the record justifying the issuance of a writ of habeas corpus.⁹

(9) It is manifest on the face of Videtto'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 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 of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁸*Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

⁹*Maxion v. State*, 686 A.2d 148, 151 (Del. 1996).