

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SEAN M. JAMISON,	§
	§
Defendant Below-	§ No. 440, 2002
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. Nos. IN99-12-1082 thru
	§ -1091 and IN00-02-1457 thru
Plaintiff Below-	§ -1459
Appellee.	§

Submitted: April 25, 2003

Decided: June 3, 2003

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

**ORDER**

This 3<sup>rd</sup> day of June 2003, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Sean Jamison, filed this appeal from the Superior Court's order denying his motion to withdraw his guilty plea. Jamison essentially contends that his guilty plea was involuntary because: (i) the Superior Court failed to inform him that it could deviate from the sentencing guidelines; and (ii) he was never informed that the Superior Court could sentence him to more time than the State recommended in the plea agreement. We find no merit to Jamison's arguments. Accordingly, we affirm the Superior Court's judgment.

(2) Jamison was arrested in November 1999 and charged with first degree intentional murder, first degree felony murder, four counts of first degree robbery, and related weapons, assault, burglary, and conspiracy charges. In October 2000, three days into his capital murder trial, Jamison pled guilty to first degree felony murder, possession of a firearm during the commission of a felony, four counts of first degree robbery, two counts of first degree assault, first degree burglary, second degree assault, first and second degree conspiracy, and possession of a deadly weapon by a person prohibited. In exchange for his guilty plea, the State agreed to dismiss the intentional murder charge and to recommend a life sentence on the felony murder charge, minimum mandatory sentences on the weapons and robbery charges, and sentences consistent with SENTAC guidelines on the remaining charges.<sup>1</sup>

(3) On November 11, 2000, the Superior Court sentenced Jamison on the felony murder conviction to life in prison without the benefit of probation, parole, or any other sentence reduction, plus a total period of 152 years in prison on the remaining charges. Jamison did not file a direct appeal from his convictions and sentences. Instead, in September 2001, Jamison filed a motion to withdraw his guilty plea, which the Superior Court denied in July 2002.

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<sup>1</sup> Although the plea agreement did not sum up the individual sentences, the State's total recommended sentence equaled life plus 22 years and nine months in prison, followed by one year of probation. The total maximum prison sentence allowable under Delaware law was life plus 153 years, although the plea agreement inaccurately reflected life plus 163 years.

(4) Following the imposition of sentence, a motion to withdraw a guilty plea constitutes a collateral attack on the conviction.<sup>2</sup> Thus, following sentencing, a motion to withdraw a guilty plea must be filed in compliance with, and is subject to the procedural requirements of, Superior Court Criminal Rule 61.<sup>3</sup> Rule 61(i) provides that the any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is thereafter barred unless the petitioner can establish cause for the default and prejudice,<sup>4</sup> or there is a colorable claim of a miscarriage of justice due to a constitutional violation.<sup>5</sup>

(5) Under the circumstances of Jamison’s case, the SENTAC sentencing guidelines recommended a sentence of life plus 22 years and nine months in prison, which was consistent with the State’s recommendation. The Superior Court sentenced Jamison to life plus 152 years in prison. Jamison alleges that his guilty plea was involuntary because he was never informed that the Superior Court could deviate from the SENTAC guidelines and because he was never informed that the Superior Court could deviate from the State’s recommendation in the plea agreement.

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<sup>2</sup> *Blackwell v. State*, 736 A.2d 971, 972-73 (Del. 1999).

<sup>3</sup> DEL. SUPER. CT. CRIM. R. 32(d) (after sentencing, “a plea may be set aside only by motion under Rule 61”).

<sup>4</sup> DEL. SUPER. CT. CRIM. R. 61(i)(3).

<sup>5</sup> *Id.* 61(i)(5).

(6) To the extent he alleges that his guilty plea was involuntary due to Superior Court error, Jamison's opening brief asserts no cause for why he did not raise these claims on direct appeal, nor does he assert a colorable claim of a miscarriage of justice. Accordingly, we conclude that Jamison's allegations of court error are barred by Rule 61(i)(3).

(7) To the extent he alleges that his guilty plea was involuntary due to the ineffective assistance of his trial counsel, Jamison has failed to satisfy his burden of proof. In the context of a guilty plea, a defendant must show that his counsel's performance fell below an objective standard of reasonableness and that, but for his counsel's deficient performance, he would not have pled guilty but would have insisted on going to trial.<sup>6</sup> Jamison's conclusory allegations fail to satisfy either prong of this standard. Jamison's plea agreement reflected that the agreement was not an agreed-to sentence under Superior Court Criminal Rule 11(e)(1)(C)<sup>7</sup> and that nobody had promised Jamison what his sentence would be. Jamison further acknowledged during his guilty plea colloquy that he understood the maximum penalties for the offenses to which he was pleading guilty. In the absence of clear and convincing evidence to the contrary, Jamison is bound by these

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<sup>6</sup> *MacDonald v. State*, 778 A.2d 1064, 1074-75 (Del. 2001).

<sup>7</sup> At the time of his guilty plea, Superior Court Criminal Rule 11(e)(1)(C) allowed the State and a defendant to enter into a binding agreement regarding a defendant's sentence. If the agreement was not accepted by the Superior Court, then the defendant was permitted to withdraw the plea and proceed to trial. Rule 11(e)(1)(C) was repealed effective July 1, 2001.

representations.<sup>8</sup> In light of this record, we find no support for Jamison's assertion that his counsel's performance was constitutionally deficient.

(8) Moreover, we find no support for Jamison's contention that he would have continued with his capital murder trial rather than plead guilty if he had understood that he could be sentenced to life plus 152 years in prison, instead of the State's recommendation of life plus 22 years and nine months in prison. Jamison's decision to plead guilty three days into his capital murder trial in exchange for the State's recommendation of a life sentence provided Jamison with a clear benefit. Jamison acknowledged during his plea colloquy that he was guilty of the offenses, that he understood his plea agreement would result in him spending the rest of his life in prison, and that he was satisfied with his counsel's representation. In light of this record, we find Jamison's present allegations of prejudice to be unsubstantiated.

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>8</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).