

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MAJOR S. FOSTER, JR.,	§
	§
Defendant Below-	§ No. 549, 2000
Appellant,	§
	§
v.	§ Court Below–Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. Nos. IK98-07-0043
Plaintiff Below-	§ IK98-07-0047
Appellee.	§

Submitted: February 22, 2001

Decided: March 14, 2001

Before **HOLLAND, BERGER** and **STEELE**, Justices

ORDER

This 14th day of March 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Major S. Foster, Jr., filed this appeal from an 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, Foster claims he was provided ineffective assistance of counsel. To the extent Foster has not argued other grounds to support his appeal

that were previously raised, those grounds are deemed waived and will not be addressed by this Court.¹

(3) In 1998 Foster pleaded guilty to attempted robbery in the second degree and driving after judgment prohibited. On the attempted robbery conviction, he was sentenced to 3 years incarceration at Level V, to be suspended after 15 months for decreasing levels of probation. On the conviction for driving after judgment prohibited, he was sentenced to 1 year incarceration at Level V, to be suspended after 3 months mandatory incarceration for 9 months at Level II. Foster did not file a direct appeal of his convictions or sentences. He filed several motions for reduction of sentence in the Superior Court prior to filing the instant motion for postconviction relief.

¹*Murphy v. State*, Del. Supr., 632 A.2d 1150, 1152 (1993). In the Superior Court, Foster also argued that: his 5th Amendment rights were violated; he was subjected to Double Jeopardy; his 8th Amendment rights were violated; the Superior Court judge acted improperly; and his case was handled improperly by the Superior Court.

(4) In order to prevail on his claim of ineffective assistance of counsel, Foster must show that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, he would not have pleaded guilty but would have insisted on proceeding to trial.² Foster has provided no support for his claim that unprofessional errors on the part of his counsel were prejudicial to him. In fact, during his plea colloquy Foster represented that he was satisfied with his counsel's representation. In the absence of clear and convincing evidence to the contrary, Foster is bound by the representations he made during his plea colloquy.³

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

BY THE COURT:

/s/ Carolyn Berger
Justice

² *Albury v. State*, Del. Supr., 551 A.2d 53, 58 (1988) (citing *Strickland v. Washington*, 466 U.S. 668, 694 (1984)).

³ *Somerville v. State*, Del. Supr., 703 A.2d 629, 632 (1997).

