

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD D. POWELL,	§
	§
Defendant Below-	§ No. 496, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. Nos. S97-05-0107
Plaintiff Below-	§ S97-05-0113
Appellee.	§

Submitted: February 8, 2001  
Decided: March 13, 2001

Before **WALSH, HOLLAND** and **BERGER**, Justices

**ORDER**

This 13<sup>th</sup> 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, Richard D. Powell, filed this appeal from an order of the Superior Court denying his motion for postconviction relief.<sup>1</sup> We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Powell claims that the State improperly withdrew its offer of 8 years imprisonment in connection with his plea agreement. Powell requests that his sentence be changed to 8 years

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<sup>1</sup>Powell’s “motion for writ of plain error” is essentially a motion for postconviction relief pursuant to Superior Court Criminal Rule 61.

imprisonment rather than the 10 years to which he agreed after the State improperly withdrew its offer.

(3) On October 10, 1997, Powell pleaded guilty to trafficking in cocaine and possession of a firearm during the commission of a felony.<sup>2</sup> On the trafficking conviction, Powell was sentenced to 10 years incarceration at Level V, to be suspended after 5 years mandatory incarceration for 6 months at Level III, followed by 2 years at Level II, followed by 30 months at Level I. On the conviction for possession of a firearm, Powell was sentenced to 5 years incarceration at Level V, consecutive to the trafficking conviction. Powell did not file a direct appeal from his convictions or sentences. He did, however, file a motion for postconviction relief and several applications for reduction of sentence in the Superior Court, the most recent of which was based on the same claim he advances here.

(4) When reviewing a motion under Rule 61, this Court must first determine that the motion satisfies the procedural requirements of the rule before addressing any substantive issues.<sup>3</sup> Powell's claim is procedurally barred, first, because it was not asserted in his previous motion for postconviction relief and there is no basis in the record for consideration of

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<sup>2</sup>Pursuant to Del. Super. Ct. Crim. R. 11(e) (1) (C).

<sup>3</sup>*Bailey v. State*, Del. Supr., 588 A.2d 1121, 1127 (1991).

the claim in the interest of justice;<sup>4</sup> second, because it was not asserted in the proceedings leading to the judgment of conviction and Powell has failed to show cause for relief and prejudice from a violation of his rights;<sup>5</sup> and, third, because it was formerly adjudicated in a prior application for sentence reduction in the Superior Court and there is no basis in the record for reconsideration of the claim in the interest of justice.<sup>6</sup> Moreover, there is no evidence that the Superior Court lacked jurisdiction or that there was a constitutional violation.<sup>7</sup>

(5) Powell’s claim is without merit in any case. Our review of the record, including the plea agreement, the guilty plea form and the transcript of the plea colloquy, reflects that Powell entered his guilty plea knowingly and voluntarily and understood his sentence would consist of 5 years incarceration on each charge to which he was pleading guilty.<sup>8</sup> Absent clear

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<sup>4</sup>Super. Ct. Crim. R. 61(i) (2).

<sup>5</sup>Super. Ct. Crim. R. 61(i) (3).

<sup>6</sup>Super. Ct. Crim. R. 61(i) (4).

<sup>7</sup>Super. Ct. Crim. R. 61(i) (5).

<sup>8</sup>The “TIS Guidelines” of 5 years incarceration on the trafficking charge and 3 years incarceration on the firearm charge in the Truth in Sentencing Guilty Plea Form do not support Powell’s claim. A defendant has no legal or constitutional right to appeal a statutorily-authorized sentence on the basis that it does not conform to TIS guidelines. *Mayes v. State*, Del. Supr., 604 A.2d 839, 845 (1992).

and convincing evidence to the contrary, Powell is bound by the representations he made during his plea colloquy.<sup>9</sup>

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

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>9</sup>*Somerville v. State*, Del. Supr., 703 A.2d 629, 632 (1997).