

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH C. PALMER, JR.,	§
	§
Defendant Below-	§ No. 425, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. No. S01-01-0487
Plaintiff Below-	§
Appellee.	§

Submitted: September 26, 2002
Decided: November 13, 2002

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

ORDER

This 13th day of November 2002, 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, Joseph C. Palmer, Jr., filed an appeal from the Superior Court's July 10, 2002 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The State of Delaware has moved to affirm the judgment of the Superior Court

on the ground that it is manifest on the face of Palmer's opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In March 2001, Palmer was charged by Information with one count of Home Improvement Fraud.² On June 21, 2001, Palmer pleaded guilty to that charge. His sentencing was scheduled for August 10, 2001.³ When Palmer failed to appear for sentencing on that date, a *capias* was issued for his arrest. On March 12, 2002, Palmer was taken into custody and his sentencing was rescheduled. On March 22, 2002, he was sentenced as an habitual offender⁴ to 2 years incarceration at Level V. Palmer did not file a direct appeal of his conviction or sentence.

(3) In his appeal, Palmer claims that: a) he was coerced into entering his guilty plea; b) he was charged improperly with home improvement fraud because the repairs were to be done on a business, not a dwelling; and c) his counsel provided ineffective assistance.

(4) Palmer's first claim is without any factual basis. The transcript of the plea colloquy reflects clearly that Palmer understood the nature of the

¹SUPR. CT. R. 25(a).

²DEL. CODE ANN. tit. 11, § 916(b) (4).

³The State represented that, if full restitution in the amount of \$2, 112.25 were paid prior to sentencing, it would withdraw its motion for habitual offender status and renegotiate the plea and sentence.

⁴DEL. CODE ANN. tit. 11, § 4214(a).

charge of home improvement fraud, admitted that he had committed home improvement fraud, and voluntarily entered a plea of guilty to that charge. Moreover, Palmer stated on his guilty plea form that his plea was voluntary and that he was satisfied with his counsel's representation. Absent clear and convincing evidence to the contrary, Palmer is bound by those representations.⁵

(5) Palmer's second claim is equally unavailing. A voluntary guilty plea constitutes a waiver of any alleged defects or errors occurring prior to the entry of the plea.⁶ Accordingly, we conclude that Palmer has waived any claims concerning the nature of the charge against him.

(6) In order to prevail on his third claim of ineffective assistance of counsel, Palmer must show that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's professional errors, he would not have pleaded guilty but would have insisted on proceeding to trial.⁷ Palmer's claim of ineffective assistance of counsel fails because he has provided no factual support for his claim that unprofessional errors on the part of his counsel resulted in prejudice to him.

⁵*Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

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

⁷*Albury v. State*, 551 A.2d 53, 58 (Del. 1988).

(7) It is manifest on the face of Palmer'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.

NOW, THEREFORE, IT IS ORDERED that the appellee's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice