

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GENE ELLINGSWORTH,	§	
	§	No. 200, 2002
Defendant Below,	§	
Appellant,	§	Court Below-Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in Cr.
	§	ID No. 0104000752.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 22, 2002

Decided: November 4, 2002

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

ORDER

This 4th day of November 2002, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) In September 2001, the appellant, Gene Ellingsworth, entered a *nolo contendere* plea to Burglary in the Second Degree, Burglary in the Third Degree and two counts of Theft of a Firearm. Pursuant to the plea agreement, Ellingsworth was declared an habitual offender as to the second degree burglary offense and was immediately sentenced to a total of twenty years at Level V,

suspended after thirteen years, for one year at Level IV Work Release, followed by six years at Level III probation. Ellingsworth did not file a direct appeal. He did, however, file a motion for postconviction relief seeking to withdraw his guilty plea. On March 21, 2002, the Superior Court conducted an evidentiary hearing and, at the conclusion of the hearing, denied Ellingsworth's postconviction motion. This appeal followed.

(2) In his postconviction motion and now on appeal, Ellingsworth contends that, because of psychiatric problems, he was legally incompetent in September 2001 to plead guilty.¹ In his opening brief on appeal, Ellingsworth alleges that his trial counsel was aware of, and yet failed to inform the Superior Court of, Ellingsworth's past and present psychiatric problems and of Ellingsworth's requests for a psychiatric examination and a competency hearing. Moreover, Ellingsworth alleges that his trial counsel "lied under oath" at the

¹In his opening brief, Ellingsworth states that he had "symptoms of paranoia and delusional effects" on "several occasions" prior to the September 2001 guilty plea proceeding, and that he was "disoriented and confused" at the guilty plea proceeding.

evidentiary hearing. Finally, Ellingsworth argues that the Superior Court was obligated to appoint counsel to represent him at the evidentiary hearing.

(3) To prevail on his ineffective assistance of counsel claim, Ellingsworth must show that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.² Although not insurmountable, the standard is highly demanding and leads to a strong presumption that the representation was professionally reasonable.³

²*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

³*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

(4) The test for determining a defendant’s competence to plead guilty is whether the defendant had a “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and . . . a rational as well as factual understanding of the proceedings against him.”⁴ In this case, there is nothing in the record that suggests that Ellingsworth was unable to consult with his trial counsel with a reasonable degree of rational understanding or was unable to understand the proceedings against him. To the contrary, the transcript of the guilty plea hearing indicates that Ellingsworth communicated in a meaningful way with his trial counsel and understood the guilty plea proceedings in which he actively participated. Moreover, the transcript of the guilty plea proceedings and the guilty plea form clearly indicate that Ellingsworth’s waiver of his constitutional rights was knowing and voluntary.

⁴*Weeks v. State*, 653 A.2d 266, 270 (Del. 1995) (quoting *Dusky v. United States*, 362 U.S. 402 (1960)).

(5) We agree with the Superior Court that Ellingsworth’s incompetency claim is without merit. Accordingly, Ellingsworth cannot establish that he was prejudiced by his trial counsel’s failure to inform the Superior Court that he had requested a psychiatric examination and a competency hearing. Ellingsworth’s claim to the contrary is without merit. (6) Ellingsworth’s remaining claims, *i.e.*, that his trial counsel “lied under oath” at the evidentiary hearing, and that the Superior Court was obligated to appoint counsel to represent him at the evidentiary hearing, are also without merit. Ellingsworth’s claim that his trial counsel “lied under oath” is conclusory and not supported by the record. Ellingsworth is incorrect that the Superior Court was obligated to appoint counsel to represent him at the evidentiary hearing. There is no right to court-appointed counsel in postconviction proceedings.⁵ The Superior Court will appoint counsel to pursue postconviction relief “only in the exercise of discretion and for good cause shown, but not otherwise.”⁶

⁵*Pennsylvania v. Finley*, 481 U.S. 551 (1987).

⁶Super. Ct. Crim. R. 61(e).

(7) After hearing testimony at the evidentiary hearing, reviewing the plea agreement, the guilty plea form and the transcript of the plea colloquy, the Superior Court ruled that Ellingsworth was not incompetent to plead guilty in September 2001, was educated and articulate, and had accepted the 13-year sentence deal that had been negotiated by the parties. We agree with the Superior Court that Ellingsworth has not demonstrated an error in the entry and acceptance of his guilty plea, and his claims of ineffective assistance of counsel are without merit.

(8) It is manifest on the face of Ellingsworth's opening brief that this appeal is without merit. 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 State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice