

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEFFREY ROSE,	§
	§
Defendant Below-	§ No. 264, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN98-12-0014
Plaintiff Below-	§ IN98-12-0015
Appellee.	§ VN95-10-0808

Submitted: September 6, 2002
Decided: October 18, 2002

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

ORDER

This 18th day of October 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Jeffrey Rose, filed an appeal from the Superior Court's April 15, 2002 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ We find no merit to the appeal. Accordingly, we AFFIRM.

¹We remanded this matter to the Superior Court for review of Rose's Rule 61 claim of ineffective assistance of counsel, which the Superior Court did not address in its July 23, 2001 order. *Rose v. State*, Del. Supr., No. 358, 2001, Holland, J. (Feb. 4, 2002).

(2) In January 1999, Rose pleaded guilty² to drug and weapon charges. Among other things, he was sentenced to a 4-year Level V prison term for the weapon conviction. At a violation of probation (“VOP”) hearing in July 2000,³ the Superior Court re-imposed Rose’s 4-year Level V sentence for the weapon conviction. In February 2001, Rose filed a motion for postconviction relief claiming that he had been sentenced for a crime to which he did not plead guilty and that his counsel had provided ineffective assistance. In its June 7, 2001 order, the Superior Court, believing that Rose had been sentenced improperly, reduced his sentence to 2 years Level V incarceration, but did not dispose of Rose’s claim of ineffective assistance of counsel.

(3) On February 4, 2002, this Court affirmed the Superior Court’s order and remanded the matter for disposition of Rose’s ineffective assistance of counsel claim.⁴ On remand, the Superior Court sua sponte determined that Rose’s original 4-year sentence was proper, but in light of inconsistencies in the record relating to the weapon charge, permitted the

²Pursuant to SUPER. CT. CRIM. R. 11(e) (1) (C).

³Rose absconded prior to beginning his prison term.

⁴*Rose v. State*, Del. Supr., No. 358, 2001, Holland, J. (Feb. 4, 2002).

reduced 2-year sentence to stand. Finding no prejudice, the Superior Court also denied Rose's claim of ineffective assistance of counsel.

(4) In this appeal, Rose claims that the Superior Court improperly denied his motion for postconviction relief on the ground of ineffective assistance of counsel and improperly decided the matter without an evidentiary hearing.

(5) In order to prevail on his claim of ineffective assistance of counsel, Rose 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.⁵ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁶ Where the claim arises in the context of a guilty plea, the defendant must show that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."⁷

⁵*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁶*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁷*MacDonald v. State*, 778 A.2d 1064, 1075 (Del. 2001) (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)).

(6) We have reviewed carefully the transcript of Rose's guilty plea. It is apparent from the transcript that Rose's plea was voluntary and that he agreed to a total of 5 years Level V incarceration on the drug and weapon charges, followed by probation, which is the sentence he received. Rose has, thus, failed to demonstrate that any alleged errors on the part of his counsel resulted in prejudice to him and the Superior Court was correct in so deciding.⁸

(7) Rose's claim that the Superior Court improperly decided his ineffective assistance of counsel claim without a hearing is also without merit. It is within the discretion of the Superior Court to determine whether an evidentiary hearing is needed in a postconviction proceeding.⁹ There is no evidence in this case that the Superior Court abused its discretion by determining that it could decide Rose's postconviction motion without a hearing.

⁸Contrary to the observation of the Superior Court, however, there was no impropriety in Rose's counsel responding to Rose's ineffective assistance of counsel claim. SUPER. CT. CRIM. R. 61(g) and (h); DELAWARE LAWYERS' RULES OF PROFESSIONAL CONDUCT 1.6(b) and 3.3.

⁹SUPER. CT. CRIM. R. 61(h).

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

BY THE COURT:

/s/ Randy J. Holland
Justice