

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEROME COLLINS,	§
	§
Defendant Below-	§ No. 377, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0808031303
Plaintiff Below-	§
Appellee.	§

Submitted: August 2, 2012  
Decided: September 11, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

**ORDER**

This 11th day of September 2012, upon consideration of the appellant's Supreme Court Rule 26(c) brief, the State's response thereto, the Superior Court's report on remand, and the parties' supplemental memoranda in response to the report on remand, it appears to the Court that:

(1) The defendant-appellant, Jerome Collins (Collins), was indicted in November 2008 on charges of Murder in the First Degree, Possession of a Firearm during the Commission of a Felony, and Possession of a Firearm by a Person Prohibited. On July 8, 2010, following jury selection but prior to opening statements, Collins entered a plea of guilty to one count of Murder in the Second Degree. The Superior Court ordered a presentence

investigation. On October 21, 2010, Collins filed a pro se motion seeking to withdraw his guilty plea. On October 22, 2010, Collins filed a petition for a writ of habeas corpus. The Superior Court continued the sentencing scheduled for December 10, 2010, pending a ruling on Collins' petitions. On March 28, 2011, the Superior Court denied the petition for a writ of habeas corpus. On May 31, 2011, the Superior Court denied Collins' motion to withdraw his plea. On June 22, 2011, Collins filed a second motion to withdraw his plea, which the Superior Court denied in open court at Collins' sentencing hearing on July 1, 2011. The Superior Court sentenced Collins to a period of fifty years at Level V incarceration to be suspended after serving thirty-five years for decreasing levels of supervision.

(2) After this appeal was filed, Collins' counsel filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c). Collins filed several points for the Court to consider, including an argument that his guilty plea had been involuntary because his counsel had been ineffective for failing to inform him of all the plea offers made by the State. The State responded by filing a motion to affirm the Superior Court's judgment. After considering the parties' respective arguments, we remanded the matter to the Superior Court to determine, as a matter of fact, whether the State had made other plea offers to Collins and whether those plea offers had been

communicated to him by his counsel. The Superior Court appointed counsel to represent Collins solely for purposes of the remand. After a review of Collins' position on remand,<sup>1</sup> the Superior Court issued its report to this Court. The Superior Court found, based on Collins' own admission, that the State had not made any other plea offers that were more favorable than the plea ultimately accepted by Collins and that all plea offers had been communicated to Collins. The parties have filed supplemental memoranda in response to the report on remand, and the matter again is before us for consideration of the State's motion to affirm the judgment below.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.<sup>2</sup>

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<sup>1</sup> The attorneys involved in the plea negotiations all filed affidavits below indicating that Collins was informed of all plea offers made by the State and that Collins did not receive a better plea offer than the one he ultimately accepted. Collins did not dispute counsels' representations. Thus, Collins' appointed counsel on remand informed the Superior Court that a fact-finding hearing was unnecessary because there were no facts in dispute.

<sup>2</sup> *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

(4) The record reflects that Collins was charged with first degree murder and related weapon offenses in the shooting death of Andre Jenkins. Prior to trial, defense counsel filed a motion in limine seeking to exclude statements made by Jenkins to a responding police officer, which allegedly identified Collins as his assailant. Prior to the start of trial, but after the jury was selected, the Superior Court denied the motion in limine, holding that Jenkins' statements were admissible both as excited utterances and present sense impressions. Following this ruling, the Superior Court asked Collins if he would like more time to consider an open plea offer from the State. Later that day, after meeting with his counsel, Collins accepted a negotiated plea offer and pled guilty to a reduced charge of second degree murder with a presentence investigation to follow.

(5) Prior to his scheduled sentencing date, Collins filed a pro se motion to withdraw his guilty plea. He alleged that his trial counsel had been ineffective for failing to keep him informed of developments in the plea negotiations and for failing to inform him of all plea offers made. He contended that counsel did not properly "aid [him] in reaching a decision." On May 31, 2011, the Superior Court denied the motion, holding that Collins failed to provide clear and convincing evidence of a fair and just reason to grant his motion. Collins filed a second motion to withdraw. In

that motion, he asserted that this guilty plea was the product of duress due to: (i) the conditions of his pretrial confinement, which, he contends, violated his Eighth Amendment rights against cruel and unusual punishment; (ii) his mental health issues; and (iii) coercion by his trial counsel and the trial judge. The Superior Court denied this motion in open court at Collins' sentencing.

(6) On appeal, Collins has raised four issues in response to his attorney's Rule 26(c) brief. First, he contends that the Superior Court erred in denying his motion to withdraw his plea. Next, he contends that his plea was not voluntary because he was not given the chance to review the evidence prior to accepting the plea. Third, he suggests that the trial judge was biased against him, which is reflected in the lengthy sentence imposed. Finally, Collins contends that due to conflicts, his case was passed from attorney to attorney, which led to Collins accepting a plea out of frustration. In his supplemental memorandum following remand, Collins reiterates his claim that his guilty plea was not knowing and voluntary because his trial counsel was ineffective for letting him plead guilty to a charge that lacked any factual support and for failing to advise him of the sentencing consequences of pleading guilty to Murder in the Second Degree.

(7) We review the Superior Court’s denial of Collins’ motion to withdraw his guilty plea for abuse of discretion.<sup>3</sup> Upon moving to withdraw his guilty plea, the burden was on Collins to establish a fair and just reason to permit the withdrawal.<sup>4</sup> A judge should permit withdrawal of a plea only if the judge determines that “the plea was not voluntarily entered or was entered because of misapprehension or mistake of defendant as to his legal rights.”<sup>5</sup>

(8) The record in this case unequivocally establishes that, at the time of entering his plea, Collins: (i) was informed of all plea offers made by the State; (ii) understood that by accepting the State’s final and best plea offer, he faced a minimum sentence of fifteen years imprisonment and a maximum sentence of life imprisonment; (iii) was not promised a particular sentence; (iv) was satisfied with his counsel’s representation; and (v) was pleading guilty because he, in fact, was guilty of shooting Andre Jenkins. Absent clear and convincing evidence to the contrary, Collins was bound by the sworn answers he provided in open court.<sup>6</sup> Under the circumstances, we find no abuse of the Superior Court’s discretion in denying Collins’ motion

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<sup>3</sup> *Chavous v. State*, 953 A.2d 282, 285 (Del. 2008).

<sup>4</sup> Del. Super. Ct. Crim. R. 32(d) (2007).

<sup>5</sup> *Scarborough v. State*, 938 A.2d 644, 650 (Del. 2007) (quoting *State v. Insley*, 141 A.2d 619, 622 (Del. 1958)).

<sup>6</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

to withdraw his guilty plea. Collins simply failed to sustain his burden of establishing duress or coercion or any other error by his trial counsel.

(9) Moreover, we find no merit to Collins' suggestion that his thirty-five sentence reflects bias by the sentencing judge. At his guilty plea hearing, Collins acknowledged that the sentencing range for his conviction was fifteen years to life in prison.<sup>7</sup> The Superior Court's imposition of a thirty-five year sentence was within the range and does not reflect evidence of a closed mind.<sup>8</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>7</sup> See Del. Code Ann. tit. 11, § 4205(b)(1) (2007).

<sup>8</sup> See *Siple v. State*, 701 A.2d 79, 83 (Del. 1997).