

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RECARDO B. WEATHERSPOON,	§	
	§	No. 452, 2003
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County in IS00-01-
	§	0302, 0303, 0305.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 0001003156

Submitted: December 9, 2003
Decided: March 15, 2004

Before **HOLLAND, BERGER** and **STEELE**, Justices.

ORDER

This 15th day of March 2004, 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 appellant, Recardo B. Weatherspoon, filed an appeal from an order of the Superior Court denying his motion for modification of sentence. The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) On June 14, 2000, Weatherspoon pleaded guilty to Delivery of Cocaine and two counts of Conspiracy in the Second Degree. As part of the plea agreement, Weatherspoon was declared an habitual offender¹ and was immediately sentenced to a mandatory thirteen years at Level V on the delivery offense and a total of four years at Level V suspended for four years at Level III for the conspiracy offenses.

(3) On June 23, 2000, Weatherspoon filed a *pro se* motion for reduction of sentence that was denied by the Superior Court on August 3, 2000. In August 2002, Weatherspoon filed a motion for postconviction relief that was denied by the Superior Court on October 1, 2002. The denial of postconviction relief was affirmed on appeal.²

(4) On August 12, 2003, Weatherspoon filed a *pro se* motion for modification of sentence. In support of his motion, Weatherspoon asserted that he had availed himself of numerous educational and treatment programs while incarcerated, and that he was remorseful for his crimes. By order dated August 14, 2003, the Superior Court denied Weatherspoon's motion on the

¹Del. Code Ann. tit. 11, § 4214(a) (providing that the sentencing court may impose a sentence of up to life imprisonment for a fourth felony conviction).

²*Weatherspoon v. State*, 2003 WL 723992 (Del. Supr.).

basis that he was serving a mandatory thirteen-year sentence at Level V. This appeal followed.

(5) On appeal, Weatherspoon does not argue any of the grounds that he raised in his sentence modification motion.³ Rather, Weatherspoon questions, for the first time in this appeal, the nature of his guilty plea. Specifically, Weatherspoon alleges that (a) the Superior Court did not inform him that it had rejected the plea agreement; (b) he was not aware that the plea had been entered pursuant to Superior Court Criminal Rule “11(e)(1)(4),” as stated by the Superior Court in its August 14 order; and (c) neither the plea agreement nor the plea colloquy, unlike the sentence order, identified the plea as one entered pursuant to Superior Court Criminal Rule 11(e)(1)(C).⁴

(6) The record, namely the guilty plea hearing transcript and the plea agreement, supports Weatherspoon’s contention that the parties initially considered a different plea agreement that included an eighteen-year sentence at Level V for the delivery offense, suspended after ten years, plus four years at Level V for the conspiracy offenses. The record does not support Weatherspoon’s contention, however, that the Superior Court rejected the plea

³As a result, those grounds are deemed waived and will not be addressed by this Court. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

⁴Superior Court Criminal Rule 11(e)(1)(C) was repealed effective July 1, 2001.

agreement. Rather, it appears that the agreement was withdrawn when the prosecutor observed that a suspended sentence is not allowed under the habitual offender statute.⁵ Ultimately, after further negotiations, the parties executed a plea agreement resulting in the mandatory thirteen-year sentence that was imposed by the Superior Court.⁶

(7) Weatherspoon points out that “Rule 11(e)(1)(C)” is invoked in the June 14, 2000 sentencing order,⁷ but it is not marked on the plea agreement form nor was it alluded to at the guilty plea hearing.⁸ Also, Weatherspoon correctly notes that the Superior Court cited in error to “Rule 11(e)(1)(4)”⁹ in its August 14 order denying Weatherspoon’s sentence modification motion. Neither the inconsistency nor the error, however, had a prejudicial impact on Weatherspoon. Whether or not the “Rule 11(e)(1)(C)” box was checked on the plea agreement form or invoked at the guilty plea hearing, the June 14, 2000

⁵See Del. Code Ann. tit 11, § 4214(a) (providing that any sentence imposed shall not be subject to suspension).

⁶The revised plea agreement reduced Weatherspoon’s period of imprisonment by one year.

⁷The sentencing order states, “[t]his sentence is pursuant to Rule 11(e)(1)(c).”

⁸At the guilty plea hearing, the prosecutor said, “There is a sentence short of life that the State in all candor would be satisfied with, and I’ve reviewed that and I understand that Mr. Weatherspoon is in agreement with that, although it’s not an 11(e)(1)(C).” Hr’g Tr. at 2 (June 14, 2000).

⁹Indeed, there is no section “(e)(1)(4)” in Superior Court Criminal Rule 11.

sentencing order accurately reflects the agreed-upon sentence that was imposed by the Superior Court. The Superior Court's mistaken reference to "Rule 11(e)(1)(4)" in the order denying Weatherspoon's sentence modification motion appears to have been a typographical error and was not intended to, nor did it, reflect the nature of Weatherspoon's guilty plea.

(8) It is manifest on the face of Weatherspoon's opening brief that this appeal is without merit. The issues presented on appeal are controlled by settled Delaware law. To the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice