IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM JOHN EVANS,	§	
	§	
Defendant Below-Appellant,	§	No. 291, 2000
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr.A. Nos. IN95-05-0769RI-0771RI
Plaintiff Below-Appellee.	§	

Submitted: September 15, 2000
Decided: November 15, 2000

Before **WALSH**, **HOLLAND** and **STEELE**, Justices

O R D E R

This 15th day of November 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, William John Evans, filed an appeal from the May 26, 2000 order of the Superior Court denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Evans claims that: first, the Superior Court abused its discretion by denying his motion for postconviction relief without a hearing; second, he was provided ineffective assistance of

counsel; third, there was no factual basis for his guilty plea; fourth, the State failed to serve him with a copy of its response to his motion for postconviction relief; and, fifth, his guilty plea was involuntary because he was not fully informed about his sentence.

(3) In April 1998, Evans pleaded guilty to first degree arson, first degree reckless endangering and insurance fraud. He was sentenced to a total of 5 years incarceration at Level V.[1] Evans did not file a direct appeal from his convictions or sentences.

(4) Evans first claims that the Superior Court abused its discretion in denying his motion for postconviction relief without a hearing. This claim is without merit. Whether an evidentiary hearing is desirable on a motion for postconviction relief is within the discretion of the Superior Court.[2] It does not appear that Evans ever requested a hearing and there is no indication that the Superior Court abused its discretion in deciding Evans' motion for postconviction relief solely on the basis of the record before it.

[1]In October 1998, the Superior Court amended Evans' sentence by deducting 4 months from the 5-year sentence.

[2]Super. Ct. Crim. R. 61(h).

(5) Evans' second claim is that he was provided ineffective assistance of counsel. In order to prevail on his claim of ineffective assistance of counsel, Evans 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.[3] Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."[4]

(6) Evans cites several examples of allegedly ineffective representation by his attorney, including failure to investigate the facts, refusal to obtain discovery from the State, failure to move to suppress statements made to the Fire Marshall during an allegedly illegal detention and failure to interview the Fire Marshall prior to trial. We have reviewed closely the record in this case, including defense counsel's affidavit,[5] and conclude that there is no evidence to support Evans' allegation that defense counsel's performance fell below an objective standard of reasonableness

[3] *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

[4] *Flamer v. State*, Del. Supr., 585 A.2d 736, 753 (1990).

and, therefore, no evidence that, but for counsel's unprofessional errors, Evans would have proceeded with trial rather than pleading guilty.[6]

(7) Evans' next claim is that there was no factual basis for a judgment against him and, therefore, no factual basis for his guilty plea.[7] This claim is also without merit. When a guilty plea is entered, the factual basis for the plea is most clearly established by a defendant's specific admission in open court that he did what he is charged with doing.[8] In this case, Evans admitted all of the charges against him, thus clearly establishing the factual basis for his guilty plea.

(8) Evans' next claim is that the State did not serve him with its response to his motion for postconviction relief, thus depriving him of an opportunity to rebut the State's arguments. Our review of the record indicates that Evans was not served with the State's response. Evans did, however, file his own 11-page response to defense counsel's affidavit. The response filed by the State rebutted the claims made by Evans in his Rule 61 motion, relying heavily on defense counsel's affidavit. We have

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[5]Super. Ct. Crim. R. 61(g) (2).

[6]*Somerville v. State*, Del. Supr., 703 A.2d 629, 631 (1997).

[7]Super. Ct. Crim. R. 11(f).

[8]*Raison v. State*, Del. Supr., 469 A.2d 424, 426 (1983).

reviewed carefully the submissions filed below and conclude that Evans' claims were presented fully to the Superior Court, which properly determined they were without merit. Any error by the Superior Court in failing to provide Evans with an opportunity to respond directly to the State's arguments was, thus, harmless.

(9) Evans' final claim is that his guilty plea was not voluntary because he was not informed of the "full range of possible sentence" at the time he entered his plea. Specifically, Evans contends that he should have been told that he could not "hold [his public defender] liable" for legal malpractice once he entered his guilty plea.[9] This claim is unavailing. The standards for proving ineffective assistance of counsel in a criminal proceeding are equivalent to the standards for proving legal malpractice in a civil proceeding.[10] Because Evans has no claim for ineffective assistance of counsel against his public defender in his criminal case, he also has no civil claim against his public defender for legal malpractice. Whether or not Evans was aware of the parameters of any future legal malpractice

[9]In an order dated May 26, 2000, the Superior Court granted the defendant's motion to dismiss Evans' claim of legal malpractice against his public defender. *Evans v. Perillo*, Del. Super., C.A. No. 00C-02-24. Evans has appealed the Superior Court's decision to this Court. *Evans v. Perillo*, Del. Supr., No. 292, 2000.

[10]*Sanders v. Malik*, Del. Supr., 711 A.2d 32, 34 (1998).

claim against his public defender at the time he entered his plea is, thus, inconsequential, since there is no such viable claim. Moreover, the transcript of the plea colloquy reflects that there was no error on the part of the Superior Court in accepting Evans' guilty plea.[11]

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

BY THE COURT:

Randy J. Holland
Justice

[11]Super. Ct. Crim. R. 11; *Howard v. State*, Del. Supr., 458 A.2d 1180, 1184-85 (1983).