

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH S. WINGATE,	§	
	§	
Defendant Below-	§	No. 491, 2003
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. Nos. IN02-07-1970; 1971;
	§	1975
Plaintiff Below-	§	
Appellee.	§	

Submitted: January 30, 2004

Decided: March 25, 2004

Before **HOLLAND**, **STEELE** and **JACOBS**, Justices

ORDER

This 25th day of March 2004, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Joseph S. Wingate, filed an appeal from the Superior Court's September 9, 2003 order 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 July 2002, Wingate was indicted on charges of Possession of a Deadly Weapon During the Commission of a Felony, Aggravated Menacing, Possession of a Deadly Weapon By a Person Prohibited, two counts of Unlawful Imprisonment in the Second Degree, Terroristic Threatening and Endangering the

Welfare of a Child. In December 2002, Wingate pleaded guilty to Aggravated Menacing, Possession of a Deadly Weapon By a Person Prohibited and Endangering the Welfare of a Child. The State dismissed the remaining charges. Wingate was sentenced to a total of 8 years and 30 days incarceration at Level V, to be suspended after 1 year for probation. He did not file a direct appeal from his sentences and convictions.

(3) In his motion for postconviction relief, Wingate alleged that Julie DeRicco, his girlfriend and the victim of the crimes with which he was charged “did not corroborate the police report” and, further, that he had “a notarized letter from the supposed victim stating such.”¹ Wingate later sent to the Superior Court a copy of a letter from DeRicco, without a notarization, to be attached to his motion for postconviction relief. The letter stated that Wingate was innocent of the charges against him. The Superior Court then wrote to Wingate stating that, if he was in possession of a notarized letter from DeRicco and wanted it to be considered, he must file the original notarized letter, not a copy, no later than two weeks from August 26, 2003.

¹ According to the affidavit of probable cause issued by the police, DeRicco reported that she and Wingate argued while parked at a Kentucky Fried Chicken in Newark, Delaware, that Wingate threatened her with a 7 inch-long knife and that their 1 year-old son was in the back seat of the vehicle during the incident.

(4) Because the original notarized letter was not received within the time prescribed, the Superior Court denied Wingate's motion for postconviction relief by order dated September 9, 2003. Wingate then filed a motion for reconsideration, attaching what he alleged was the original notarized letter from DeRicco, which was dated July 29, 2003.

(5) On October 3, 2003, the Superior Court provided the State an opportunity to respond to Wingate's motion for reconsideration. In its response opposing the motion, the State questioned the notarization on the letter, noting that the letter that was supposedly notarized on July 29, 2003 was identical to the one previously provided by Wingate on August 20, 2003, which was not notarized. The State also questioned the validity of the victim's recantation, stating that DeRicco had spoken with the prosecutor about the incident on several occasions and always had been fully cooperative with the investigation.

(6) On October 1, 2003, prior to the Superior Court's ruling on his motion for reconsideration, Wingate filed his notice of appeal in this Court from the Superior Court's September 9, 2003 order. On November 17, 2003, the Superior Court dismissed all of Wingate's motions then pending in the Superior Court in light of his appeal to this Court.

(7) In this appeal, Wingate claims that: a) his guilty plea was coerced due to the ineffective assistance of his counsel; b) the Superior Court should have considered DeRicco's letter stating that he was innocent of the charges against him; and c) the Superior Court failed to follow the sentencing recommendation as contained in the plea agreement.

(8) Wingate's first claim that his guilty plea was coerced because his counsel provided ineffective assistance is without merit. In order to prevail on a claim of ineffective assistance of counsel in connection with a guilty plea, a defendant must show that, but for his counsel's unprofessional errors, he would not have pleaded guilty, but would have insisted on proceeding to trial.² There is no evidence that any alleged error on the part of Wingate's counsel caused him to plead guilty rather than proceed to trial. Wingate received a positive benefit from his guilty plea, since the State dismissed the charges of Possession of a Deadly Weapon During the Commission of a Felony, Terroristic Threatening and two counts of Unlawful Imprisonment in the Second Degree. Moreover, the guilty plea form signed by Wingate reflects that his guilty plea was voluntary and that he was satisfied with his counsel's representation. Absent clear and convincing evidence to the contrary, Wingate is bound by these representations.³

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

³ *Id.* at 632.

(9) Wingate next claims that the Superior Court improperly failed to consider DeRicco's letter in its September 9, 2003 order. We find no abuse of discretion on the part of the Superior Court. At the time of the September 9, 2003 order, Wingate had not submitted an original notarized letter from DeRicco, as the Superior Court had ordered him to do. In the absence of that letter, the Superior Court was within its discretion to reject Wingate's argument that he was not guilty of the crimes of which he was convicted.

(10) Wingate's third claim is that the Superior Court improperly failed to follow the sentencing recommendation in the plea agreement. This claim, too, is without merit. As long as a sentence is within the statutory limits, it may not be challenged merely because it exceeds the sentence recommendation contained in the plea agreement.⁴ Wingate does not allege that his sentences exceed the statutory limits. Moreover, Wingate stated on the guilty plea form that no one had promised him what his sentence would be. Thus, he understood at the time he entered his guilty plea that he could be given sentences in excess of the State's recommendation.

⁴ *Mayes v. State*, 604 A.2d 839, 845 (Del. 1992).

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

BY THE COURT:

/s/ Myron T. Steele
Justice