

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| ERNEST A. CRUMP, | § |
| | § |
| Defendant Below- | § No. 72, 2004 |
| Appellant, | § |
| | § Court Below—Superior Court |
| v. | § of the State of Delaware, |
| | § in and for Kent County |
| STATE OF DELAWARE, | § Cr.A. No. IK02-09-0326 |
| | § Cr. ID No. 0208021763 |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: February 27, 2004

Decided: April 5, 2004

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

ORDER

This 5th day of April 2004, upon consideration of the opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Ernest Crump, filed this appeal from the Superior Court's denial of his motion for postconviction relief. The State has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Crump's opening brief that the appeal is without merit. We agree and affirm.

(2) Crump pled guilty in February 2003 to one count of escape after conviction. The Superior Court sentenced Crump, consistent with

Crump's plea agreement, to one year of incarceration followed by probation. Crump did not file a direct appeal to this Court. Instead, he filed separate motions in the Superior Court seeking a modification of his sentence or a withdrawal of his guilty plea. The Superior Court denied both motions. Thereafter, Crump filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61, which the Superior Court also denied. This appeal followed.

(3) In his opening brief on appeal, Crump asserts that he was denied the effective assistance of counsel because his trial counsel refused to file certain pretrial motions that Crump had requested. Crump asserts that his attorney's failure to follow his instructions resulted in Crump's coerced guilty plea.

(4) To support a claim of ineffective assistance of counsel, a defendant must demonstrate that (a) counsel's conduct fell below an objective standard of reasonableness; and (b) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial.¹ A defendant must make concrete allegations of cause and actual prejudice to substantiate a claim of

¹ *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

ineffective assistance of counsel or else risk summary dismissal.² In Crump's guilty plea form and during his plea colloquy, he expressed satisfaction with his counsel's performance. In the absence of clear and convincing evidence to the contrary, Crump is bound by these statements.³ Crump has presented no clear contrary evidence to call his prior sworn testimony into question.

(5) Crump has failed to substantiate his claim of ineffective assistance of counsel by the attorney who represented him during the guilty plea proceeding. We find it manifest on the face of Crump's opening brief that his appeal is without merit. The State's motion to affirm shall be granted.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

² *Younger v. State*, 580 A.2d 552, 556 (Del. 1980).

³ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).