

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE MOORE,	§
	§ No. 457, 2012
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID Nos. 0504021045
	§ 0505016449
Plaintiff Below-	§
Appellee.	§

Submitted: May 23, 2013¹
Decided: June 19, 2013

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 19th day of June 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Andre Moore, filed an appeal from the Superior Court’s August 6, 2012 order adopting the July 20, 2012 report of the Superior Court Commissioner, which recommended that Moore’s first motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.² We find no merit to the appeal. Accordingly, we affirm.

¹ This appeal was stayed pending the Court’s decision in *Holmes v. State*, Del. Supr., No. 350, 2012, Jacobs, J. (May 23, 2013).

² Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

(2) The record before us reflects that, in June 2005, a grand jury indicted Moore on numerous charges related to several armed robberies of gas stations and a hotel. In July of 2005, a grand jury indicted Moore on additional charges related to the armed robbery of a fast food restaurant. On February 2, 2006, Moore pleaded guilty to 2 counts of Robbery in the First Degree, 2 counts of Robbery in the Second Degree and one count each of Possession of a Firearm During the Commission of a Felony and Conspiracy in the Second Degree. In exchange for Moore's guilty plea, the State dismissed all of the remaining charges in both indictments and agreed to recommend no more than 14 years of Level V incarceration.

(3) On April 7, 2006, the Superior Court sentenced Moore to a total period of 20 years at Level V incarceration, to be suspended after 11 years for decreasing levels of supervision. At the time of sentencing, Moore was serving a 15-month Level V sentence on a separate conviction of Robbery in the Second Degree. Moore did not file a direct appeal from his convictions.

(4) In lieu of a direct appeal, Moore has filed several motions, petitions and appeals challenging his sentences. He filed three motions for modification of sentence pursuant to Rule 35, all of which were denied by the Superior Court. Moore appealed the denial of his third Rule 35 motion

to this Court, which affirmed the Superior Court's judgment.³ Moore then filed a petition for a writ of certiorari in this Court, which was dismissed by Order dated April 10, 2012.⁴

(5) On July 9, 2012, Moore filed his first postconviction motion under Rule 61. In his motion, Moore claimed that the Superior Court committed an abuse of discretion by sentencing him for both first degree robbery and a weapon violation. The Superior Court denied the motion, noting that Rule 61 does not encompass motions for sentence modification. This appeal followed.

(6) In this appeal from the Superior Court's denial of his first postconviction motion, Moore claims that his guilty plea was involuntary because his counsel provided ineffective assistance at the time his guilty plea was entered by not informing him of the possible range of his sentences. Moore also claims that the Superior Court abused its discretion by denying his motion for a transcript of his sentencing hearing at State expense.

(7) In order to demonstrate that a guilty plea was involuntary, the defendant must provide a transcript of the guilty plea hearing.⁵ In order to prevail on a claim of ineffective assistance of counsel in connection with a

³ *Moore v. State*, Del. Supr., No. 289, 2010, Holland, J. (Aug. 4, 2010).

⁴ *In re Moore*, Del. Supr., No. 136, 2012, Jacobs, J. (Apr. 10, 2012).

⁵ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987); Supr. Ct. R. 9(e) (ii) and 14(e).

guilty plea, the defendant must demonstrate that there is a reasonable probability that, but for his counsel's errors, he would not have pleaded guilty, but would have insisted on proceeding to trial.⁶

(8) Moore has failed to provide a copy of his guilty plea colloquy to this Court on appeal, thereby precluding his claim of error in connection with his guilty plea.⁷ Moreover, Moore's plea agreement and Truth in Sentencing guilty plea form reflect that, at the time his plea was entered, he was well aware of the potential penalties for each of the charges against him and, specifically, that he was subject to a 9-year minimum mandatory penalty---3 years at Level V on each on each of the first degree robbery convictions and 3 years at Level V on the weapon conviction. We, therefore, conclude that Moore's first claim is without merit.

(9) Moore's second claim that the Superior Court abused its discretion when it denied his request for a free transcript of his sentencing hearing is equally unavailing. A defendant does not have a right to a free transcript to pursue postconviction relief in the absence of a showing of good cause.⁸ Moore supported his request for a free transcript with his argument that he was sentenced improperly. However, the Superior Court

⁶ *Albury v. State*, 551 A.2d 53, 60 (Del. 1988).

⁷ *Id.*

⁸ *Harris v. State*, Del. Supr., No. 507, 2006, Steele, C.J. (Jan. 31, 2008) (citing *United States v. MacCollum*, 426 U.S. 317, 325-26 (1976)).

had already ruled on several occasions that Moore's claim was meritless. Under these circumstances, we find no abuse of discretion on the part of the Superior Court in denying Moore's request for a free transcript and, therefore, conclude that his second claim also is without merit.

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

BY THE COURT:

/s/ Carolyn Berger
Justice