

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| ANIBAL MELENDEZ, | § |
| | § |
| Defendant Below- | § No. 21, 2004 |
| Appellant, | § |
| | § Court Below—Superior Court |
| v. | § of the State of Delaware, |
| | § in and for New Castle County |
| STATE OF DELAWARE, | § Cr.ID 0104020056 |
| | § |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: June 18, 2004
Decided: August 25, 2004

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

ORDER

This 25th day of August 2004, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Anibal Melendez, filed this appeal from the Superior Court's denial of his first petition for postconviction relief. On appeal, Melendez argues that his trial counsel was ineffective in several respects. We find no merit to Melendez's contentions. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that, in April 2002, before the start of his capital murder trial, Melendez pled guilty in the Superior Court to one count each of second degree murder, second degree assault, possession of a

firearm during the commission of a felony, and possession of a deadly weapon by a person prohibited. In June 2002, the Superior Court sentenced Melendez to a total of 48 years in prison. Melendez did not file a direct appeal to this Court from his guilty plea or sentence. Instead, Melendez filed a motion for reduction of sentence, which the Superior Court denied. Thereafter, Melendez filed a motion for postconviction relief under Superior Court Criminal Rule 61. The Superior Court denied the motion in a 34-page opinion. This appeal followed.

(3) In his opening brief on appeal, Melendez raises three claims of ineffective assistance of counsel. First, Melendez claims that his trial counsel was ineffective for allowing Melendez to enter his guilty plea involuntarily. Second, Melendez contends that his trial counsel was ineffective for failing to adequately investigate his case. Finally, Melendez argues that his trial counsel was ineffective because he had a disqualifying conflict of interest.

(4) We review the Superior Court's denial of postconviction relief under Rule 61 for abuse of discretion.¹ To prevail on a claim of ineffective assistance of counsel, the petitioner must establish: (a) that defense counsel's representation fell below an objective standard of reasonableness; and (b)

¹ *Outten v. State*, 720 A.2d 547, 551 (Del. 1998).

that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the case would have been different.² There is a strong presumption that counsel's conduct was professionally reasonable.³

(5) Melendez first contends that his counsel was ineffective and coerced his guilty by promising him that his sentence would not exceed more than 14 years in prison. The plea agreement and the transcript of the plea colloquy, however, reflect that Melendez was informed that the maximum possible sentence he could receive under the plea agreement was 56 years in prison and that the minimum mandatory sentence required by law was 14 years. The record reflects that Melendez understood the maximum possible sentence, and his guilty plea reflects that his counsel did not make any promises to him about the sentence he would receive. Absent clear and convincing evidence to the contrary, Melendez is bound by his statements during the guilty plea colloquy.⁴

(6) Melendez next claims that his counsel was ineffective for failing to properly investigate his case. Melendez asserts that the three witnesses who were prepared to testify on behalf of the State had all been

² *Id.* at 551-52 (citing the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 688 (1984)).

³ *Albury v. State*, 551 A.2d 53, 59 (Del. 1988).

⁴ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

coerced by the police into giving false statements against him. The Superior Court found no factual basis in the record to support this assertion. As the Superior Court noted, the record of the plea colloquy reflects the extensive efforts of both of Melendez's attorneys in exploring possible defenses and preparing Melendez's case. Moreover, Melendez acknowledged on the record that he was satisfied with his counsel's performance. We find no abuse of the Superior Court's discretion in denying this claim as conclusory and unsubstantiated.⁵

(7) Finally, Melendez claims that one of his appointed attorneys had a disqualifying conflict of interest because he was acquainted with the mother of one of the victims. The record on this issue, however, does not support Melendez's claim. The record reflects that defense counsel did not become aware that he knew the mother of the assault victim until after the plea hearing, when defense counsel encountered her in the courthouse. Defense counsel represents that he informed Melendez of this fact and also told Melendez that he did not know the victim herself. Counsel asserts that Melendez agreed that the issue was minor and that he wanted counsel to

⁵ *Dawson v. State*, 673 A.2d 1186, 1196 (Del. 1996) (holding that a petitioner must substantiate concrete allegations of attorney ineffectiveness or risk summary dismissal).

remain on the case. Melendez disputes that he ever was informed of defense counsel's familiarity with the victim's mother.

(8) Even if we assume without deciding that defense counsel had an actual conflict that Melendez did not waive, the alleged conflict clearly had no adverse effect on counsel's representation. Melendez does not dispute that counsel was unaware that he knew the victim's mother until after Melendez had entered his guilty plea. In these circumstances, any alleged conflict had no impact on counsel's representation before the entry of the guilty plea or on Melendez's decision to plead guilty. Thus, we find no error in the Superior Court's conclusion that Melendez failed to establish actual prejudice to support his claim of ineffective assistance of counsel.⁶

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁶ See *Thomas v. State*, 2001 WL 760860 (Del. May 17, 2001).