

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMAH K. GROSVENOR,	§
	§
Defendant Below-	§ No. 141, 2004
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0204003496
Plaintiff Below-	§
Appellee.	§

Submitted: September 24, 2004  
Decided: November 22, 2004

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

**ORDER**

This 22<sup>nd</sup> day of November 2004, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendant-appellant, Jamah Grosvenor, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. We find no merit to the issues raised in Grosvenor's opening brief. Accordingly, we affirm the judgment of the Superior Court.

(2) The record reflects that Grosvenor and three codefendants were arrested within minutes after robbing a liquor store. Grosvenor pled guilty on December 11, 2002 to two counts of first degree robbery and one count of possession of a firearm during the commission of a felony. The Superior

Court sentenced Grosvenor in March 2003 to seven years at Level V incarceration to be followed by eight years at decreasing levels of supervision. Grosvenor did not appeal. Instead, he filed a petition for postconviction relief pursuant to Superior Court Criminal Rule 61. After receiving responses from Grosvenor's trial counsel and from the State, the Superior Court denied the petition. This appeal followed.

(3) In his opening brief on appeal, Grosvenor raises four issues, which all assert that his trial counsel was ineffective and that his counsel's ineffectiveness led to his coerced guilty plea. To support a claim of ineffective assistance of counsel, Grosvenor must demonstrate that (a) his counsel's conduct fell below an objective standard of reasonableness; and (b) there is a reasonable probability that, but for his counsel's errors, he would not have pled guilty but would have insisted on going to trial.<sup>1</sup> A defendant asserting a claim of ineffective assistance is required to make concrete allegations of cause and actual prejudice to substantiate a claim of ineffective assistance of counsel or else risk summary dismissal.<sup>2</sup> Although not insurmountable, there is a strong presumption that counsel's representation was professionally reasonable.<sup>3</sup>

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<sup>1</sup> *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

<sup>2</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

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

(4) Grosvenor enumerates four claims of ineffective assistance of counsel in his opening brief.<sup>4</sup> First, he claims that his counsel had a conflict of interest. Second, Grosvenor asserts that his counsel coerced one of his codefendants to plead guilty. Third, Grosvenor claims his counsel was ineffective for failing to file a motion to dismiss the aggravating menacing charges or to merge those charges into the robbery charges. Finally, Grosvenor claims his counsel failed to keep him reasonably informed of the evidence that the State intended to present at trial.

(5) With respect to Grosvenor's third claim, we note that Grosvenor failed to raise this issue in the Superior Court. Accordingly, absent plain error, we will not review it for the first time on appeal.<sup>5</sup> The record reflects that the State ultimately dismissed the aggravating menacing charges, in addition to several other charges, in exchange for Grosvenor's guilty plea. Even assuming that counsel erred in failing to file a motion to dismiss or merge the aggravating menacing charges,<sup>6</sup> we find no reasonable

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<sup>4</sup> Grosvenor raised other issues in the postconviction motion he filed in the Superior Court. To the extent Grosvenor failed to raise those claims in his opening brief on appeal, he has waived his right to pursue those claims. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

<sup>5</sup> See Del. Supr. Ct. R. 8.

<sup>6</sup> After Grosvenor entered his guilty plea and was sentenced, one of his codefendants, Raheem Poteat, filed a direct appeal from his convictions following trial. This Court held in Poteat's appeal that the charges of aggravated menacing should have merged with the robbery charges. See *Poteat v. State*, 840 A.2d 599 (Del. 2003).

probability that an earlier dismissal of the charges would have changed Grosvenor's decision to plead guilty in light of the maximum possible sentence that Grosvenor could have received on the remaining charges.<sup>7</sup> Thus, we find no plain error necessitating review of this newly-raised claim.

(6) With respect to his first two claims, which are intertwined, Grosvenor contends that his lawyer conspired with his codefendants' respective lawyers to coerce the defendants to accept the State's plea offer. Grosvenor asserts that his attorney coerced codefendant, Chris Gray, into accepting the State's plea offer. After accepting the offer, Gray gave a statement implicating Grosvenor in the crime. Grosvenor argues that his counsel's coercion led to Gray's decision to plead guilty and to implicate Grosvenor, which in turn coerced Grosvenor to plead guilty.

(7) Grosvenor's counsel responded to these allegations. Counsel asserted that the purpose of the joint meeting between the four codefendants and their four attorneys was to convey the State's plea offer and to evaluate the evidence and the risks in proceeding to trial. After considering Grosvenor's claim and his counsel's response, the Superior Court concluded that there was no merit to Grosvenor's claim of coercion or conflict. To the

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<sup>7</sup> Grosvenor's two codefendants who rejected the State's plea offer and chose instead to go to trial were each found guilty of all of the charged offenses and sentenced to twenty-four years at Level V.

extent that Gray decided to plead guilty, it was on the advice of his own counsel, not Grosvenor's counsel. Moreover, the Superior Court concluded that no conflict was created by the attorneys' decision to jointly discuss the State's plea offer with their clients to quell any fears that a defendant who accepted the plea might be labeled a snitch. The Superior Court also noted that Grosvenor, under oath, stated that his decision to plead guilty was knowing and voluntary and that he was satisfied with his counsel's performance. Absent clear and convincing evidence to the contrary, we find no error in the Superior Court's conclusion that Grosvenor was bound by his representations.<sup>8</sup>

(8) Grosvenor's final claim is that his counsel was ineffective for failing to adequately consult with him regarding the State's lack of forensic evidence implicating him in the robbery. Even assuming the truth of Grosvenor's allegation that the State lacked forensic evidence linking him to the robbery, the record simply does not support Grosvenor's allegation of ineffective assistance of counsel. With or without forensic evidence, the case against Grosvenor and his codefendants was substantial. The four were arrested within minutes of the robbery, fleeing from the police. Codefendant Chris Gray implicated Grosvenor in the robbery. During the guilty plea

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<sup>8</sup> See *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

colloquy, Grosvenor stated that he was entering a plea because he was guilty of the charges. Under the circumstances, we conclude that the record reflects that Grosvenor's guilty plea was knowing and voluntary. He, therefore, is bound by his representations that he was satisfied with his counsel's performance.<sup>9</sup>

(9) Having carefully considered the parties' respective positions, we find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned decision dated March 30, 2004. The Superior Court did not err in concluding that Grosvenor's claims lacked merit. Accordingly, we find no abuse of discretion in the Superior Court's summary disposition of Grosvenor's petition without holding a hearing.<sup>10</sup>

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

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>9</sup> *Id.*

<sup>10</sup> *See Maxion v. State*, 686 A.2d 148, 151 (Del. 1996).