

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY M. WALL,)
) No. 212, 2004
 Petitioner Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for Sussex County
)
 STATE OF DELAWARE,) Cr. ID No. 0112000776
)
 Respondent Below,)
 Appellee.)

Submitted: December 1, 2004
Decided: January 11, 2005

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

ORDER

This 11th day of January, 2005, on consideration of the parties' briefs, it appears to the Court that:

1. Anthony M. Wall appeals his drug convictions in the Superior Court, claiming the State failed to introduce sufficient evidence to support a finding of guilt beyond a reasonable doubt. After entering and then violating the conditions of a first offenders program, Wall was tried according to the terms of a program-mandated agreement. In the agreement, Wall waived his right to appeal any later conviction. Because the record indicates Wall knowingly and voluntarily waived his appeal rights, and enforcing the provision would not work a miscarriage of justice, we find the waiver to be valid. Accordingly, we affirm.

2. In December 2001, Ocean View police spotted an automobile, driven by codefendant Thomas Barger, displaying license tag numbers registered to another vehicle. Wall sat in the front passenger seat. After stopping the car, officers discovered a pipe and a canister of marijuana under Wall's seat, and another marijuana canister behind the ashtray. The officers then arrested Wall and Barger for possession of marijuana and possession of drug paraphernalia.

3. Because he had no prior record, Wall entered the Superior Court's First Offenders Controlled Substance Diversion Program, which allows first-time offenders to avoid prosecution following the completion of a probationary period. When he entered the program, Wall stipulated to certain facts surrounding his arrest, and agreed that if he violated the terms of his probation, he would be tried solely on this record. In the agreement, Wall also waived various trial rights, including the right to appeal a later conviction.¹

4. After failing to appear for a status hearing in April 2003, a Superior Court commissioner removed Walls from the program. A year later, pursuant to Wall's drug-court agreement, a Superior Court judge held a stipulated trial. Sitting as factfinder, the trial judge found Walls guilty of both possession charges. Walls

¹ See Drug Diversion Petition, Waiver, and Agreement (Anthony M. Wall), I.D. No. 00476696 (Mar. 27, 2002) ¶ 6(g) ("I further understand by agreeing to the stipulated trial . . . [that] I am surrendering certain rights, including . . . my right to appeal unless the sentence imposed exceeds the statutory maximum sentence prescribed by law.").

now appeals, claiming the stipulated facts were insufficient to support a finding of guilt beyond a reasonable doubt.

5. Defendants charged with possession-and-use drug crimes may avoid prosecution by voluntarily enrolling in the statutory First Offenders Controlled Substances Diversion Program.² On fulfilling the program's terms of probation, defendants are discharged "without an adjudication of guilt."³ Although participants must waive certain rights to participate,⁴ the program is a "salutary" mechanism designed to give first offenders a "second chance."⁵ The program's enabling statute itself does not bar appeals from stipulated trials.⁶

6. We have consistently recognized that defendants may waive their constitutional rights when entering into plea agreements so long as the waiver is knowing, intelligent, and voluntary.⁷ Unless enforcement would work a

² 16 *Del. C.* § 4764.

³ *Id.* § 4764(d).

⁴ *See id.* § 4764(b)

⁵ *Rash v. State*, 318 A.2d 603, 604 (Del. 1974) (interpreting earlier version of statute).

⁶ *Id.* at 605 ("[I]f the procedure established by the statute is set in motion and thereafter a defendant violates probation, he will then be [tried and] sentenced and at that time an appeal is available to him.") (bracketed phrase reflects subsequent statutory revision).

⁷ *See, e.g., MacDonald v. State*, 778 A.2d 1064, 1074 (Del. 2000); *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997). *See also United States v. Mezzanatto*, 513 U.S. 196, 201 (1995) ("A criminal defendant may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution.").

“miscarriage of justice,” waiver-of-appeal agreements are valid.⁸ Because it is a question of law, we review the validity of a defendant’s waiver of appeal *de novo*.⁹

7. Wall concedes that he voluntarily entered the program. He was represented by counsel during the entire process, and both the trial judge and defense counsel informed him of the rights he was waiving by entering the program. Wall also testified that he understood that he was giving up those rights, and signed and dated each page of the probation agreement. Taken together, these circumstances indicate Wall knowingly, intelligently, and voluntarily waived his right to appeal. Based on this evidence, we find that enforcing the waiver agreement inflicts no “miscarriage of justice” on Wall.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁸ *United States v. Khattak*, 273 F.3d 557, 563 (3d Cir. 2001); *cf. Webster v. State*, 604 A.2d 1364, 1366 (Del. 1992) (noting postconviction relief for miscarriage of justice available when waiver “mistaken”); *State v. Marvel*, 1994 Del. Super. LEXIS 61 (holding knowing and voluntary waiver of jury-trial right cannot work miscarriage of justice).

⁹ *Khattak*, 273 F.3d at 560. *Cf. Webster v. State*, 604 A.2d 1364, 1366 (Del. 1992) (holding colorable claim that miscarriage of justice has occurred is question of law reviewed *de novo*).