

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TIMOTHY J. ASHLEY,	§
	§
Defendant Below-	§ No. 565, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 1005007538
Plaintiff Below-	§
Appellee.	§

Submitted: September 6, 2013
Decided: September 19, 2013

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

ORDER

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

(1) The appellant, Timothy Ashley, filed this appeal from the Superior Court's denial of his motion for postconviction relief. We find no merit to Ashley's appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Ashley was indicted in June 2010 on ten criminal charges, including Trafficking in Cocaine, Possession of a Firearm During the Commission of a Felony, and related offenses. On September 15, 2010, Ashley pled guilty to one count of Possession of a Firearm During the Commission of a Felony and the lesser included offense of Attempted Possession with Intent to

Deliver Cocaine.¹ In exchange for his guilty plea, the State dismissed the remaining eight counts of the indictment. The Superior Court immediately sentenced Ashley to a total period of eighteen years at Level V incarceration, to be suspended after serving four years in prison for eighteen months at decreasing levels of supervision. Ashley did not file a direct appeal. Instead, on June 6, 2011, he filed a motion for postconviction relief, which the Superior Court denied. This appeal followed.

(3) In his two-page opening brief on appeal, Ashley enumerates six allegations of ineffective assistance of counsel without providing any argument based on the specific facts of his case. Ashley asserts in his opening brief that he “clearly established the following ineffective assistance of counsel issues: 1. Failure to Investigate; 2. Ill Advise as to Evidence; 3. Failure [to File a] Suppress [sic] Motion; 4. Failure to Prepare for Trial; 5. On Numerous Occassion [sic] Provided Incorrect Information; and 6. Fail to Interview Witnesses.”

(4) To establish a claim of ineffective assistance of counsel in the context of a guilty plea, 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

¹ See DEL. CODE ANN. tit. 11, § 1447A (2007); DEL. CODE ANN. tit. 16, § 4751 (2003).

but would have insisted on going to trial, resulting in his acquittal.² A defendant must make concrete allegations of cause and actual prejudice to substantiate a claim of ineffective assistance of counsel or else risk summary dismissal.³

(5) Ashley, however, failed to make any concrete allegations of either cause or prejudice. In fact, the record before us belies Ashley's vague assertions that his attorney was not prepared and provided incorrect advice. Ashley was arrested during the execution of a search warrant for a residence in Smyrna (which was within 1000 feet of a high school) and was found in possession of over fifteen grams of cocaine and \$244 in cash. The police also found a bag in the same room in which Ashley was arrested that contained a gun and ammunition, as well as papers with Ashley's name on them. Ashley was charged with ten criminal offenses, which carried a potential ninety-five year sentence.⁴ The State offered a plea deal that would have required Ashley to spend more than four years in prison. Ashley rejected that offer, and his attorney later was able to negotiate a better deal that would require Ashley to plead guilty to two offenses and to spend only four years in prison.

² *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985).

³ *Younger v. State*, 580 A.2d 552, 556 (Del. 1980).

⁴ Moreover, Ashley had a prior drug conviction, which would have increased his potential minimum mandatory sentence.

(6) At the colloquy for his plea hearing, the judge reviewed the evidence and the rights that Ashley was waiving by pleading guilty. Ashley stated, under oath, that he was satisfied with his counsel's performance and that he was pleading guilty knowingly and voluntarily because he was, in fact, guilty of the charged offenses. In the absence of clear and convincing evidence to the contrary, Ashley is bound by his sworn statements.⁵ Accordingly, we find no merit to Ashley's claim that his guilty plea was the result of his counsel's ineffective assistance and that, but for his counsel's errors, he would have gone to trial and been acquitted.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁵ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).