

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|-------------------------------|
| LEE LEWIS, SR., | § |
| | § |
| Defendant Below- | § No. 27, 2000 |
| Appellant, | § |
| | § |
| v. | § Court Below— Superior Court |
| | § of the State of Delaware, |
| STATE OF DELAWARE, | § in and for Sussex County |
| | § Cr.A. No. S99-05-0560-R1 |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: March 8, 2000
Decided: March 27, 2000

Before **WALSH, HOLLAND** and **HARTNETT**, Justices

ORDER

This 27th day of March 2000, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Lee Lewis, Sr., filed this appeal from an order of the Superior Court denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Lewis claims that: 1) he received ineffective assistance of counsel; and 2) his arrest was illegal because it was based upon false statements by the police and improper police procedures.

(3) In September 1999, Lewis pleaded guilty to possession with intent to deliver cocaine. He was sentenced to 7 years incarceration at Level V, with credit for time served, to be suspended after serving 5 years for 2 years probation at Level III. Lewis did not file a direct appeal of his conviction or sentence.

(4) In order to prevail on his claim of ineffective assistance of counsel, Lewis must show that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.¹ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."²

(5) Lewis' claim that his counsel provided ineffective assistance is without merit. Lewis' fundamental complaint concerning his counsel's performance is that she moved to suppress a videotape that was

¹*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

exculpatory. However, the record reflects that the motion to suppress the videotape was denied. If Lewis had chosen to go to trial rather than plead guilty, the videotape could have been used to support his version of the facts. Lewis' signed guilty plea form reflects that he voluntarily pleaded guilty. Thus, he has waived any alleged defects or errors occurring before the entry of the plea.³ The guilty plea form also reflects that Lewis was satisfied with his attorney's representation. He is bound by the representations made on his guilty plea form in the absence of clear and convincing evidence to the contrary.⁴ There is, finally, no evidence in the record that Lewis' counsel's performance fell below an objective standard of reasonableness or that any alleged errors by counsel prejudiced him.

(6) Lewis' remaining claims concerning alleged police misconduct are procedurally barred because he did not raise them in the proceedings leading to the judgment of conviction.⁵ There is no evidence that the procedural bar is inapplicable due to a miscarriage of justice because of a

²*Flamer v. State*, Del. Supr., 585 A.2d 736, 753 (1990).

³*Downer v. State*, Del. Supr., 543 A.2d 309, 311-12 (1988).

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

⁵Super. Ct. Crim. R. 61(i) (3).

constitutional violation.⁶ Moreover, Lewis' voluntary plea of guilty constitutes a waiver of any alleged defects or errors occurring before the entry of the plea.⁷

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State's motion to affirm is GRANTED. The judgment of the Superior Court is hereby AFFIRMED.

BY THE COURT:

Randy J. Holland
Justice

⁶Super. Ct. Crim. R. 61(i) (5).

⁷*Downer v. State*, 543 A.2d at 311-12.