

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLIFF A. BASS,	§
	§ No. 396, 2002
Defendant Below,	§
Appellant,	§
v.	§ Court Below – Superior Court
	§ of the State of Delaware, in and
	§ for New Castle County
STATE OF DELAWARE,	§ Cr.A. No. IN98-08-0970
	§ I.D. No. 9807021744
Plaintiff Below,	§
Appellee.	§

Submitted: November 19, 2002
Decided: December 12, 2002

ORDER

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

This 12th day of December, 2002, it appears to the Court that:

1) On November 9, 1998, the defendant-appellant, Cliff A. Bass (“Bass”), entered a guilty plea to Trafficking in Cocaine (over 100 grams) pursuant to Rule 11(e)(1)(c). He was sentenced to be incarcerated for eighteen years at Level V, suspended after fifteen years, followed by various periods of probation. He was fined \$400,000. The fine was suspended.

2) On November 9, 2001, Bass filed a motion for postconviction relief, pursuant to Superior Court Criminal Rule 61 (Rule 61). As grounds for relief, he raised the issue of ineffective assistance of counsel. In that motion, Bass alleged that his trial counsel failed to: (i) file a motion to

suppress; (ii) investigate the facts of his case; and, (iii) advise him that he might be fined.

3) The Superior Court summarily rejected Bass' claims of ineffective assistance of counsel. The Superior Court ruled that in the absence of clear and convincing evidence to the contrary, Bass was bound by his statements during the plea colloquy and the signed Guilty Plea form. The Superior Court concluded that Bass had asserted no basis for overruling the sentencing judge's finding that the guilty plea was entered by Bass knowingly and voluntarily. As a consequence, the Superior Court held that Bass had waived the right to object to any and all errors which occurred before the entry of the guilty plea.

4) In this appeal, Bass alleges that the Superior Court erred as a matter of law by failing to consider the substance of his claims of ineffective assistance of counsel, claims alleging that Bass' trial counsel failed to investigate the facts of his case and failed to file a motion to suppress evidence. The Superior Court summarily rejected these claims on the basis that Bass had waived any objection to these types of defects or error because they occurred prior to the entry of the guilty plea. In support of its decision, the Superior Court cited *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997) and *Wells v. State*, 396 A.2d 161 (Del. 1978). Bass contends that these

claims were not waived and that the Superior Court was required to consider the substance of these allegations. In support of his position, Bass relies upon this Court's holding in *MacDonald*.¹

5) A criminal defendant's decision to plead guilty involves the waiver of several important constitutional rights.² Therefore, in order for a guilty plea to be valid as a matter of due process, a guilty plea agreement waiving these rights must be entered into knowingly, intelligently, and voluntarily.

6) This Court has held that "a defendant's plea agreement does not surrender the defendant's right to argue that the decision to enter into the plea was not knowing and voluntary because it was the result of ineffective assistance of counsel."³ Indeed, as we stated in *MacDonald*, "[c]laims of ineffective assistance of counsel . . . challenge the voluntary and intelligent nature of the plea agreement."⁴ Accordingly, in *MacDonald*, this Court held that "[j]ustice dictates that a claim of ineffective assistance of counsel in

¹ *MacDonald v. State*, 778 A.2d 1064 (Del. 2001).

² *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Wells v. State*, 396 A.2d 161 (Del. 1978).

³ *MacDonald v. State*, 778 A.2d at 1074, citing *DeRoo v. United States*, 223 F.3d 919, 923-24 (8th Cir. 2000).

⁴ *Id.*

connection with the negotiation of [an] agreement cannot be barred by the agreement itself – the very product of the alleged ineffectiveness.”⁵

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Superior Court is reversed. This matter is remanded to the Superior Court for a hearing on the merits of Bass’ Rule 61 Motion for Postconviction Relief. Jurisdiction is not retained.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁵ *Id.* quoting *Jones v. United States*, 167 F.3d 1142, 1145 (7th Cir. 1999).