

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAWRENCE K. BARNETT,	§
	§
Defendant Below-	§ No. 317, 1999
Appellant,	§
	§
v.	§ Court Below— Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN97-12-1661
Plaintiff Below-	§ IN97-12-1663
Appellee.	§

Submitted: November 30, 1999

Decided: February 8, 2000

Before **HOLLAND, HARTNETT** and **BERGER**, Justices

ORDER

This 8th day of February 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Lawrence K. Barnett (“Barnett”), filed this appeal from a June 30, 1999 order of the Superior Court denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) Barnett asserts the following as grounds for the appeal: 1) the Superior Court abused its discretion in taking 6 months to decide his motion for postconviction relief; and 2) his counsel provided ineffective assistance in

a) failing to inform him that as part of his plea agreement he was giving up his right to appeal a prior conviction; and b) coercing him into entering the plea. To the extent Barnett has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court.¹

(3) In July 1998, Barnett pleaded guilty to carrying a concealed deadly weapon and possession of a deadly weapon by a person prohibited. On the first charge, Barnett was sentenced to 2 years imprisonment at Level V. On the second charge, he was sentenced to 8 years imprisonment at Level V, to be suspended after serving 3 years for 5 years of decreasing levels of probation. Barnett did not file a direct appeal from his convictions or sentences.

(4) Barnett's claim that the Superior Court abused its discretion in taking 6 months to decide his motion for postconviction relief is unavailing. The record indicates the following: Barnett filed his postconviction motion in the Superior Court on January 14, 1999; on that same date Barnett filed his

¹*Murphy v. State*, Del. Supr., 632 A.2d 1150, 1152 (1993). In the Superior Court Barnett also claimed that his counsel was ineffective in failing to advise him not to plead guilty because the police would question him about an unrelated homicide case, thereby risking additional criminal charges against him.

request that the plea colloquy be transcribed; on May 18, 1999, the Superior Court requested that the plea colloquy be transcribed; the transcript of the plea colloquy was filed by the court reporter on May 28, 1999; and defense counsel filed a response to Barnett's postconviction motion on June 7, 1999.²

(5) It is not clear why the plea colloquy was not transcribed until the Superior Court made its request approximately 4 months after Barnett's original request.³ However, the record does not indicate Barnett filed any objection to the alleged delay or even inquired about the status of his postconviction motion or the transcript at any time during that 4-month period.⁴ This Court will not review on appeal a claim that was not presented to the trial court in the first instance.⁵ The claim has no merit in any case as the record does not support Barnett's claim of an abuse of discretion on the part of the Superior Court, nor is there any indication of prejudice.

²Although Barnett's appendix contains a reply to defense counsel's response signed by Barnett and dated June 24, 1999, it does not appear that this pleading was ever filed in the Superior Court.

³We note that Barnett's request for transcript was incorrectly captioned "Sussex County."

⁴Also, nowhere in his reply to defense counsel's response does Barnett object to the length of time it has taken the Superior Court to decide his postconviction motion.

⁵Supr. Ct. R. 8.

(6) In order to prevail on his claim of ineffective assistance of counsel, Barnett 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.⁶ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁷

(7) Barnett's claim that his counsel provided ineffective assistance is without merit. Barnett contends that his counsel failed to inform him that, as part of the plea agreement, he would be relinquishing his right to appeal a prior conviction for possession with intent to deliver narcotics. Barnett has provided no record evidence to support this allegation. Moreover, the allegation is contradicted by the representations made in his signed plea agreement and during his plea colloquy when his counsel specifically referred to his waiver of his right to appeal his prior conviction and he stated he

⁶*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁷*Flamer v. State*, Del. Supr., 585 A.2d 736, 753 (1990).

understood he was waiving that right. In the absence of clear and convincing evidence to the contrary, Barnett is bound by those representations.⁸

(8) Barnett's claim that his counsel coerced him into pleading guilty is likewise unsupported by any record evidence and is contradicted by the representations he made on his signed guilty plea form and during his plea colloquy. On the guilty plea form, Barnett stated that no one had forced or threatened him to plead guilty. During the plea colloquy, Barnett stated he had not been coerced into pleading guilty and he was satisfied with his counsel's representation. In the absence of clear and convincing evidence to the contrary, Barnett is bound by those representations as well.⁹

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

s\Maurice A. Hartnett, III

Justice

⁸*Somerville v. State*, Del. Supr., 703 A.2d 629, 632 (1997).

⁹*Id.*

