

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM J. HAMMONS,	§
	§ No. 458, 2004
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9809019760
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 29, 2005  
Decided: September 28, 2005

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

**ORDER**

This 28<sup>th</sup> day of September 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, William J. Hammons, filed an appeal from the Superior Court's August 13, 2004 order 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 June 2002, following the testimony of the two rape victims on the second day of his trial, Hammons pleaded guilty to the lesser-included offenses of Rape in the Second Degree and Unlawful Imprisonment

in the First Degree as well as one count of Assault in the Third Degree.<sup>1</sup> He was sentenced to a total of 23 years incarceration at Level V, to be suspended after 20 years for decreasing levels of probation. This Court affirmed Hammons' convictions and sentences on direct appeal.<sup>2</sup>

(3) In this appeal, Hammons claims that: a) numerous examples of ineffective assistance by his trial counsel coerced him to enter a guilty plea;<sup>3</sup> b) his counsel provided ineffective assistance by failing to explain that his sentence would prevent him from earning good time credits on a 1983 sentence, which also coerced him to enter a guilty plea; and c) he is actually innocent of the crimes to which he pleaded guilty.<sup>4</sup>

(4) In order to prevail on a claim of ineffective assistance of counsel in the context of a guilty plea, a defendant must demonstrate 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 he would not have pleaded guilty, but would have insisted

---

<sup>1</sup> As part of the plea agreement, the State agreed to dismiss a number of additional charges, including Rape in the First Degree, Attempted Rape in the First Degree, Kidnapping in the First Degree and Terroristic Threatening.

<sup>2</sup> *Hammons v. State*, Del. Supr., No. 387, 2002, Berger, J. (May 16, 2003).

<sup>3</sup> Hammons alleges the following errors by his counsel: making prejudicial comments in his opening statement; failing to call a DNA expert to testify; failing to obtain discovery; failing to interview witnesses; and failing to object to prosecutorial misconduct.

<sup>4</sup> Prior to the filing of the State's answering brief, Hammons filed a motion to amend his opening brief to include two additional case citations. We hereby grant Hammons' motion.

on proceeding to trial.<sup>5</sup> A defendant asserting the claim must make concrete allegations of cause and actual prejudice to substantiate it, or risk summary dismissal.<sup>6</sup> Although not insurmountable, there is a strong presumption that counsel's representation was professionally reasonable<sup>7</sup> and constituted sound trial strategy.<sup>8</sup>

(5) The transcript of the guilty plea colloquy reflects that Hammons told the judge he had carefully reviewed the Truth-in-Sentencing guilty plea form and the plea agreement and that his attorney had explained everything he did not understand. He further stated that he had personally marked and signed the guilty plea form. Hammons denied that he had been threatened or forced to plead guilty. While Hammons initially stated that his attorney's representation had only been "adequate," he subsequently agreed that he was "satisfied" with his attorney's representation. He then stated that he had committed the offenses to which he was pleading guilty and reiterated that his guilty plea was voluntary. Finally, Hammons apologized to the rape victims, who were present in the courtroom, describing some details of one of the rapes.

---

<sup>5</sup> *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

<sup>6</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

<sup>7</sup> *Albury v. State*, 551 A.2d 53, 59 (Del. 1988).

<sup>8</sup> *Flamer v. State*, 585 A.2d 736, 753-54 (Del. 1990).

(6) Our review of the record in this case reflects no error on the part of Hammons' counsel that coerced Hammons into pleading guilty rather than continuing with his trial. Hammons' plea agreement with the State, which the judge accepted, provided him with a clear benefit, since it involved the dismissal of a number of serious felonies that could have resulted in his imprisonment for life. Moreover, the transcript of Hammons' guilty plea colloquy reflects that his guilty plea was knowing and voluntary. Absent clear and convincing evidence to the contrary, we find that Hammons is bound by all the representations he made during his plea colloquy, including his representation that he was satisfied with his counsel's performance.<sup>9</sup> We, therefore, find Hammons' first claim to be without merit.

(7) Hammons' second claim rests on his factual assumption that, if he serves his most recent sentence before serving a prior sentence he received in 1983 for attempted rape, he will be prevented from earning good time credits on that prior sentence. This assumption is incorrect. Where an inmate is serving two prison terms, one for a crime committed prior to the enactment of the Truth-in-Sentencing Act of 1989 ("TIS") and the other for a crime committed after TIS's effective date, any good time credits will be

---

<sup>9</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

credited to that inmate at the end of all of the sentences he is serving.<sup>10</sup> There appears to be no dispute that Hammons is entitled to good time credit on both his pre-TIS sentence and his TIS sentence.<sup>11</sup> Moreover, he will receive the same amount of good time credit, regardless of which sentence he serves first. In the absence of a valid factual predicate for Hammons' second claim and in the absence of any prejudice to Hammons, we find that claim, too, to be without merit.

(8) Hammons' third claim is that he is factually innocent and, therefore, should be allowed to withdraw his guilty plea. He offers in support of his claim a list of DNA and other evidence showing that he is not guilty of the crimes to which he pleaded guilty. Again Hammons attributes his guilty plea to "coercion" by his counsel. As discussed above, the record reflects that Hammons decided to enter into a plea agreement with the State that resulted in the dismissal of a number of serious felonies that could have resulted in a life sentence. Moreover, he did so after hearing the testimony of the two rape victims and assessing the risks at that point of continuing with his trial. His assessment of those risks resulted in the entry of a knowing and voluntary guilty plea prior to the presentation of the defense's

---

<sup>10</sup> *Snyder v. Andrews*, 708 A.2d 237, 247-48 (Del. 1998).

<sup>11</sup> *Hammons v. State*, Del. Supr., No. 387, 2002, Berger, J. (May 16, 2003).

case. Hammons is bound by the representations he made during his plea colloquy.<sup>12</sup> We, thus, find no merit to Hammons' third claim.

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

BY THE COURT:

/s/ Carolyn Berger  
Justice

---

<sup>12</sup>*Somerville v. State*, 703 A.2d at 632.