

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JESSE J. CARTER,	§
	§ No. 163, 2005
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. 0310020476
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 9, 2005
Decided: November 22, 2005

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 22nd day of November 2005, 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, Jesse J. Carter, filed an appeal from the Superior Court's April 4, 2005 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the appellant's opening brief that the appeal is without merit. We agree and affirm.

(2) In December 2003, Carter was charged with four counts of Robbery in the First Degree, four counts of Possession of a Firearm During the Commission of a Felony, and three counts of Wearing a Disguise During the Commission of a Felony. If convicted on all counts, he faced qualifying for habitual offender status and being sentenced to a minimum of 160 years of Level V incarceration.¹ On March 10, 2004, Carter pleaded guilty to three counts of Robbery in the First Degree and one count of Possession of a Firearm During the Commission of a Felony. On April 30, 2004, he was sentenced to a total of 22 years incarceration at Level V, to be suspended after 21 years for probation.

(3) In this appeal, Carter claims that: a) his attorney's false promise that he would receive a sentence of no more than 12 years incarceration at Level V induced him to plead guilty; and b) the Superior Court abused its discretion by denying his motion for postconviction relief, which was based on his claim of ineffective assistance of counsel.

(4) In order to support a claim of ineffective assistance of counsel in the context of a guilty plea, a defendant must demonstrate that: a) his counsel's conduct fell below an objective standard of reasonableness; and b) there is a reasonable probability that, but for counsel's errors, he would not

¹ Del. Code Ann. tit. 11, §§ 4201(c) and 4214(a) (2001).

have entered a guilty plea, but would have insisted on proceeding to trial.² A defendant asserting a claim of ineffective assistance of counsel is required to make concrete allegations of cause and actual prejudice or risk summary dismissal of the claim.³ Although not insurmountable, there is a strong presumption that counsel's representation was professionally reasonable.⁴

(5) The record does not support Carter's claim that his counsel promised him he would receive no more than a 12 year sentence in order to induce him to plead guilty. To the contrary, the transcript of the plea colloquy reflects that Carter told the Superior Court that he had not been promised anything about the length of his sentence. The guilty plea form reflects the same. In the absence of clear and convincing evidence to the contrary, Carter is bound by the representations he made at the time his guilty plea was entered.⁵

(6) It does appear that Carter's counsel wrote him a letter dated March 19, 2004, stating, among other things, that Carter would receive a sentence of at least 12 years and, somewhat ambiguously, that "there is no reason for it to be more than that." However, the letter was written after the entry of Carter's guilty plea and in anticipation of sentencing. While the

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

³ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

⁴ *Strickland v. Washington*, 466 U.S. 668, 688 (1984); *Albury v. State*, 551 A.2d 53, 59 (Del. 1988).

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

letter may explain why Carter was disappointed with the sentence he received, it does not reflect that Carter relied on a false promise by his attorney in pleading guilty.

(7) In light of these circumstances, we find no basis for Carter's ineffective assistance of counsel claim and no abuse of discretion on the part of the Superior Court in denying Carter's motion for postconviction relief on that ground.

(8) It is manifest on the face of Carter's opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent judicial discretion is implicated, clearly there was no abuse of discretion.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice