

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GALEN COLLINS,	§
	§
Defendant Below-	§ Nos. 87 & 130, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID No. 9802013395
Plaintiff Below-	§
Appellee.	§

Submitted: June 7, 2002
Decided: July 10, 2002

Before **VEASEY**, Chief Justice, **HOLLAND**, and **BERGER**, Justices.

ORDER

This tenth day of July 2002, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The defendant-appellant, Galen Collins, filed these consolidated appeals from two orders of the Superior Court dated January 27, 2002 and March 1, 2002, respectively. The January 27 order denied Collins' first motion for postconviction relief. The March 1 order denied Collins' motion to recuse the judge who ruled on the postconviction motion. After careful consideration of the issues raised on appeal, we have concluded that the Superior Court's judgment regarding Collins' postconviction motion must

be reversed. This matter will be remanded for further proceedings consistent with this Order.

(2) The procedural circumstances leading to Collins' criminal convictions are unusual. Collins, at the age of 16, was indicted in March 1998, along with Abraham Farnum and Dion Oliver, on charges of trafficking cocaine (more than 100 grams), possession with intent to deliver cocaine, carrying a concealed deadly weapon, possession of a firearm during the commission of a felony, and resisting arrest. Although Collins was a minor at the time, his case was filed as an adult criminal case in the Superior Court because of the firearm charge.¹

(3) Apparently the State engaged in extensive negotiations with the three codefendants and their respective counsel. As a result, the State achieved a "wired" plea agreement, meaning all three codefendants had to accept the respective deals offered by the State or else none of them would be offered a deal, and all three would be required to stand trial. On July 19, 1999, Collins pleaded guilty, pursuant to a plea agreement, to one count of trafficking cocaine (50 to 100 grams). The Superior Court immediately sentenced him to fifteen years at Level V incarceration, to be suspended

¹ DEL. CODE ANN. tit. 11, § 1447A(e), regarding possession of a firearm during the commission of a felony, provides that, "Every person charged under this section over the age of 15 years shall be tried as an adult, notwithstanding any contrary provisions or statutes governing the Family Court or any other state law."

after serving ten years for five years of probation. The guilty plea agreement contains no reference to Collins' codefendants, nor was there any indication in the plea agreement or during the guilty plea colloquy that Collins' plea agreement was "wired." In fact, the deputy attorney general appearing at the guilty plea hearing informed the Superior Court, "There are no other agreements, Your Honor."

(4) On July 23, 1999, the State filed a motion to vacate Collins' plea agreement. The State asserted that, after Collins' sentencing, Oliver had rejected the terms of the State's plea offer, thereby breaching the "wired" plea agreement and making Collins' plea agreement voidable by the State. Following an office conference with counsel on September 27, 1999, at which Collins was not personally present, the Superior Court granted the State's motion and reinstated all of the original charges against him.

(5) In February 2000, Collins was tried and convicted of trafficking cocaine (50 to 100 grams), possession with intent to deliver, resisting arrest, and possession of a firearm during the commission of a felony. The Superior Court judge presiding at Collins' trial was not the same judge who had accepted, and then vacated, Collins' guilty plea. At Collins' scheduled sentencing hearing, the trial judge, *sua sponte*, raised concerns about "the legality of setting aside Mr. Collins' guilty plea." The trial judge postponed

sentencing to allow the parties to file supplemental submissions on several issues, including the legality of vacating Collins' plea and sentence. On May 2, 2000, the Superior Court, among other things, denied Collins' motion to reinstate his guilty plea and sentence, stating that, although the law appears "uncertain," the prior ruling vacating the guilty plea and sentence "is not clearly incorrect and . . . is the law of the case." Furthermore, the judge noted that the "issue has now been preserved twice for appeal." The Superior Court then sentenced Collins on all four convictions to a total of twenty-three years at Level V incarceration, to be suspended after serving eighteen years minimum mandatory for five years of probation.

(6) Collins, through his trial counsel, filed a direct appeal to this Court from his convictions and sentence. Collins raised several issues on appeal but did not raise any issue challenging either the Superior Court's decision granting the State's motion to vacate Collins' plea and sentence or the decision denying Collins' motion to reinstate his guilty plea and sentence. In September 2001, this Court affirmed Collins' convictions and sentence on appeal.²

² *Collins v. State*, Del. Supr., No. 274, 2002, Berger, J. (Sept. 6, 2001).

(7) In November 2001, Collins, acting pro se, filed a motion for postconviction relief in the Superior Court. Among other things, Collins asserted a claim of ineffective assistance of counsel. Collins' motion was considered by the judge who had vacated his guilty plea and sentence.³ The judge determined that Collins' motion was subject to summary disposition⁴ and, therefore, did not request a response to Collins' motion from either the State or Collins' trial counsel. Without reaching the merits of any issues raised therein, the Superior Court held that Collins' motion was procedurally barred by Superior Court Criminal Rule 61(i)(4).⁵ The judge ruled that Collins' claim of ineffective assistance of counsel was simply an attempt to "rehash" the issue of the Superior Court's refusal to reinstate Collins' guilty plea and sentence, and the interests of justice did not require reconsideration of this claim.

³ Superior Court Criminal Rule 61(d)(1) provides that a postconviction petition should be "presented promptly to the judge who accepted a plea of guilty or nolo contendere or presided at trial in the proceedings leading to the judgment under attack." In Collins' case, the judge who had presided at trial had retired from the bench by the time Collins filed his Rule 61 petition.

⁴ Rule 61(d)(4) provides, "If it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified."

⁵ Rule 61(i)(4) provides, "Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice."

(8) We disagree. Although Collins' pro se motion may not have been artfully drafted, his claim of ineffective assistance of counsel was sufficiently stated, had not been and could not have been previously raised, and therefore was not procedurally barred by Rule 61(i)(4). Accordingly, we find that the Superior Court abused its discretion in summarily denying Collins' first petition for postconviction relief without considering the merits of the claims raised therein.

(9) We express no view on the merits of Collins' postconviction claims, nor do we find it necessary to reach the merits of Collins' claim that the judge deciding the postconviction motion should have recused himself. We have no doubt that the judge involved could fairly and impartially rule on the merits of the Collins' postconviction petition. We also find that good cause exists for the appointment of counsel to represent Collins' in this postconviction proceeding. Counsel should be permitted to review the record and, if necessary, file an amended petition for postconviction relief raising any issues counsel deems appropriate, including the ineffective assistance of counsel claim Collins already raised.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED. This matter is REMANDED for further proceedings consistent with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Randy J. Holland
Justice