

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAPHAEL B. MARTINEZ,	§
	§ No. 383, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0008013252
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 24, 2006

Decided: June 12, 2006

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

ORDER

This 12th day of June 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Raphael B. Martinez, filed an appeal from the Superior Court's July 26, 2005 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 April 2001, Martinez pleaded guilty to Escape After Conviction, Felony Theft, Failure to Stop at the Command of a Police Officer and Reckless Driving. He was sentenced on the escape conviction to 8 years of Level V incarceration, to be suspended after 4 years for 1 year of

Level IV Home Confinement and 3 years of Level III probation. He received a suspended sentence on the felony theft conviction and fines on the two remaining convictions.

(3) In this appeal, Martinez claims that the Superior Court should have reached the merits of his untimely claim¹ because his counsel's ineffective assistance in connection with his guilty plea amounted to a miscarriage of justice.² Specifically, Martinez argues that his counsel failed to apprise him of what constitutional rights he was forfeiting by pleading guilty, failed to investigate possible witnesses and failed to adequately communicate with him. Martinez also argues that the Superior Court failed to inform him about supervised release and imposed an improper sentence. He attributes all of these alleged failures to ethnic bias.

(4) When asserting a claim of ineffective assistance of counsel in connection with a guilty plea, a defendant must set forth concrete allegations of actual prejudice and substantiate those allegations, or risk summary dismissal.³ In this case, Martinez has failed to demonstrate the existence of ethnic bias or any constitutional deprivation, and, moreover, has failed to demonstrate that any alleged error on the part of his counsel caused him to

¹ Super. Ct. Crim. R. 61(i) (1). Martinez pleaded guilty on April 9, 2001, but did not file his postconviction motion until July 18, 2005, more than four years after his conviction became final.

² Super. Ct. Crim. R. 61(i) (5).

³ *Younger v. State*, 580 A.2d 552, 555-56 (Del. 1990).

plead guilty. As such, we find that the Superior Court properly exercised its discretion by denying Martinez' untimely motion for postconviction relief.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice