

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WINFRED O. BROWN, SR.,	§
	§
Defendant Below-	§ No. 79, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID. 03605001486
Plaintiff Below-	§
Appellee.	§

Submitted: July 19, 2006
Decided: September 22, 2006

Before **STEELE**, Chief Justice, **HOLLAND**, and **JACOBS**, Justices.

ORDER

This 22nd day of September 2006, after careful consideration of appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Winfred O. Brown, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. The State of Delaware has filed a motion to affirm the trial court's judgment on the ground that it is manifest on the face of Brown's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Brown pled guilty in February 2004 to one count of trafficking in cocaine and one count of possession of a firearm

during the commission of a felony. In exchange for his guilty plea, the State dismissed twelve other charges against him. The Superior Court sentenced Brown to a total period of forty years at Level V imprisonment to be suspended after serving a mandatory minimum term of six years incarceration followed by one and a half years of decreasing levels of supervision. Brown did not appeal from his guilty plea and sentence. Instead, Brown filed two different motions seeking to correct or modify his sentence. The Superior Court denied both motions which this Court affirmed on appeal.¹

(3) Thereafter, Brown filed a motion for postconviction relief, alleging six grounds: (i) ineffective assistance of trial counsel; (ii) defective search warrant; (iii) exculpatory evidence withheld; (iv) erroneous denial of a continuance request; (v) preliminary hearing testimony was perjured; and (vi) not guilty of weapon offense. The Superior Court denied Brown's motion. On appeal, Brown raises the same six claims, as well as a claim that the Superior Court abused its discretion in not conducting a hearing on his postconviction motion.

(4) In order to establish a claim of ineffective assistance of trial counsel with respect to his guilty plea, Brown must establish that: (i)

¹ *Brown v. State*, 2004 WL 2154319 (Del. Sept. 17, 2004); *Brown v. State*, 2004 WL 2149141 (Del. Sept. 13, 2004).

counsel's representation was professionally unreasonable; and (ii) but for counsel's deficiencies, there is a reasonable probability that Brown would not have pled guilty but would have insisted on going to trial and been acquitted.² The standard is highly demanding,³ and there is a strong presumption that counsel's representation was professionally reasonable.⁴

(5) Under the circumstances, Brown has failed to substantiate his claim of ineffective assistance of counsel. As the Superior Court noted, Brown was indicted on fourteen serious charges and faced the prospect of a substantial prison sentence if convicted of all charges. Brown's counsel was able to negotiate a plea bargain on his behalf that resulted in Brown's conviction on only two of the fourteen charges with a six-year minimum mandatory sentence. Given the strength of the State's evidence against him, the plea bargain clearly was advantageous to Brown. At his guilty plea colloquy, Brown told the Superior Court that he was satisfied with his counsel's representation. Absent clear and convincing evidence to the contrary, Brown is bound by that representation.⁵

² *Hill v. Lockhart*, 474 U.S. 52, 57, 59 (1985).

³ *Flamer v. State*, 585 A.2d 736, 754 (Del. 1990).

⁴ *Albury v. State*, 551 A.2d 53, 59 (Del. 1988).

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

(6) With respect to the other five claims raised in his postconviction motion, which allege errors occurring prior to the entry of his plea, Brown's voluntary guilty plea constitutes a waiver of those claims.⁶ Under the circumstances, we find no error in the Superior Court's dismissal of Brown's postconviction motion without holding a hearing.⁷

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁶ *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).

⁷ *Maxion v. State*, 686 A.2d 148, 151 (Del. 1996).