

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|----------------------------|------------------------------|
| DWIGHT W. H. PERKINS, JR., | § |
| | § No. 101, 2006 |
| Defendant Below- | § |
| Appellant, | § |
| | § Court Below—Superior Court |
| v. | § of the State of Delaware |
| | § in and for Kent County |
| STATE OF DELAWARE, | § Cr. ID No. 0407018106 |
| | § |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: September 28, 2006

Decided: October 27, 2006

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

ORDER

This 27th day of October 2006, 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, Dwight W. H. Perkins, Jr., filed an appeal from the Superior Court's January 25, 2006 sentencing order and its subsequent denial of his motion to withdraw his guilty plea and denial of his motion for transcripts. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit.

We agree and affirm.

(2) On January 25, 2006, Perkins, with the assistance of legal counsel, entered a plea of guilty to Robbery in the Second Degree (as a lesser-included offense of Robbery in the First Degree), Possession of a Firearm During the Commission of a Felony and Possession of a Deadly Weapon by a Person Prohibited. In exchange for his guilty plea, the State dismissed the charge of Robbery in the First Degree. On that same date, Perkins was sentenced to a total of twenty years of Level V incarceration, to be suspended after sixteen years for probation. Perkins subsequently filed a motion to withdraw his guilty plea and a motion for transcripts of a November 2, 2005 hearing on his motion to dismiss counsel and December 19, 2005 “office conference proceedings,” both of which were denied by the Superior Court.

(3) In this appeal, Perkins claims that the Superior Court erred by: a) accepting his involuntary guilty plea; b) denying his motion to dismiss his indictment; c) appointing as standby trial counsel the attorney he had moved to dismiss; d) undermining his right to self-representation by appointing that attorney as standby counsel; e) failing to hold an evidentiary hearing on his claim that his attorney had a conflict of interest; and f) denying his motion for transcripts.

(4) The record before us in this case, consisting of the plea agreement and guilty plea form, does not support Perkins' argument that his guilty plea was involuntary. To the contrary, the guilty plea form reflects that he answered "yes" when asked if he had freely and voluntarily decided to plead guilty and also answered "yes" when asked if he was satisfied with his counsel's representation. That Perkins originally answered "no" to those questions and then changed his answers to "yes" is not necessarily an indication of "coercion" on the part of his counsel, as Perkins argues. It is more likely reflective of a rational decision on Perkins' part to accept the substantial benefit of the plea offer extended by the State. Thus, in the absence of clear and convincing evidence to the contrary, Perkins is bound by the representations he made on his guilty plea form.¹ As such, we conclude that Perkins' first claim of an involuntary guilty plea is without merit.

(5) As for Perkins' next four claims, Delaware law provides that a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea.² Because Perkins' next four claims all constitute alleged errors or defects occurring prior to the entry of his voluntary guilty plea, we conclude that they, too, are without merit.

¹ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

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

(6) Perkins' final claim is that the Superior Court should have provided him with free transcripts of a November 2, 2005 hearing on his motion to dismiss counsel and of December 19, 2005 "office conference proceedings." It was Perkins' burden to demonstrate a particularized need for those transcripts in connection with his appeal.³ We conclude that the Superior Court did not abuse its discretion when it found he had not done so. Moreover, because the transcripts relate to matters that occurred prior to the entry of his voluntary guilty plea, Perkins is foreclosed from pursuing any claims relating to those matters in any case.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that 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/ Randy J. Holland
Justice

³ *Freeman v. State*, Del. Supr., No. 112, 2003, Berger, J. (Apr. 8, 2003).