

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BENNY ROTEN,	§
	§
Defendant Below-	§ No. 290, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0401005180
Plaintiff Below-	§
Appellee.	§

Submitted: January 4, 2007  
Decided: March 15, 2007

Before **BERGER, JACOBS, and RIDGELY**, Justices.

**ORDER**

This 15<sup>th</sup> day of March 2007, upon consideration of the appellant’s opening brief, the State’s motion to affirm, and the appellant’s response thereto, it appears to the Court that:

(1) The appellant, Benny Roten, filed this appeal from the Superior Court’s denial of his petition for postconviction relief. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Roten’s opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Roten pled guilty in August 2004 to one count of first degree assault, as a lesser included offense to attempted first

degree murder, and one count of aggravated menacing. Prior to sentencing, Roten filed a motion to withdraw his guilty plea, which the Superior Court denied. This Court affirmed Roten's convictions and sentences on direct appeal.<sup>1</sup> Thereafter, Roten filed a motion for postconviction relief, pursuant to Superior Court Criminal Rule 61, which the Superior Court denied. This appeal followed.

(3) Roten raises three issues in his opening brief on appeal. First, he contends that the Superior Court erred in denying his motion to withdraw his guilty plea. Second, Roten contends that he was denied his constitutional right to the effective assistance of counsel prior to the entry of his plea. Finally, Roten contends that the interest of justice requires reconsideration of whether Roten was under the influence of medication before the entry of his guilty plea.

(4) Roten's first and third arguments were considered and rejected in the context of his motion to withdraw his guilty plea and his appeal therefrom.<sup>2</sup> Contrary to Roten's contention, reconsideration of these previously adjudicated claims was not warranted in the interest of justice.<sup>3</sup>

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<sup>1</sup> *Roten v. State*, 2005 WL 2254202 (Del. Sept. 15, 2005).

<sup>2</sup> *See id.*

<sup>3</sup> Del. Super. Ct. Crim. R. 61(i)(4) (2007).

(5) With respect to his ineffective assistance of counsel claim, Roten contends that: (i) counsel coerced him into accepting the plea; (ii) counsel failed to investigate his mental condition, including his use of medication; (iii) counsel failed to investigate the degree of injuries to the victim; and (iv) counsel failed to raise issues that Roten wanted to argue on appeal.

(6) In order to obtain relief on an ineffectiveness claim, a defendant must establish that his counsel acted unreasonably and that, but for counsel's errors, there is a reasonable probability that the defendant would not have pleaded guilty and instead would have chosen to proceed to trial.<sup>4</sup> A defendant's sworn statements to the Superior Court during the guilty plea colloquy are presumed to be truthful and pose a "formidable barrier to any subsequent collateral proceeding."<sup>5</sup> With respect to his first two issues, Roten has offered no "clear and convincing" evidence why he should not be bound by his sworn assertions during his plea colloquy that he was not coerced into entering a plea and that he was not under the influence of any medications.<sup>6</sup>

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<sup>4</sup> *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

<sup>5</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997) (quoting *Voytik v. United States*, 778 F.2d 1306, 1308 (8<sup>th</sup> Cir. 1985)).

<sup>6</sup> *Id.*

(7) Roten next contends that counsel erred by failing to investigate the victim's "mostly superficial" injuries in order to negotiate a plea to a lesser charge. The record, however, shows no error on the part of counsel. As the Superior Court noted, the medical records regarding the victim's injuries, reflecting a brain contusion and multiple complex facial fractures, contradict Roten's contention that the victim's injuries were "mostly superficial." Accordingly, we find no error in the Superior Court's rejection of this claim of ineffectiveness.

(8) Finally, Roten argues that his counsel was ineffective on direct appeal for failing to raise the issues Roten wished to argue.<sup>7</sup> The issues involved the same grounds that formed the basis for the motion to withdraw the guilty plea, which the Superior Court had rejected. As this Court noted in its decision on Roten's direct appeal, counsel conceded the issues because they were inconsistent with Roten's own assertions made under oath at his plea colloquy. The Superior Court did not err in concluding that the arguments did not form the basis for withdrawal of the plea and would not have been successful if counsel had pursued them on appeal. Thus, there was no ineffective assistance of Roten's appellate counsel.

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<sup>7</sup> The issues were related to Roten's alleged lack of understanding of the plea agreement and the involuntary nature of his plea due to the influence of medication and the coercion of his counsel.

(8) We find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned decision dated May 18, 2006. The Superior Court did not err in concluding that Roten's motion for postconviction relief was both procedurally barred and without merit.

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice