

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PRISCILLA DORSEY,)
) No. 76, 2007
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,) Cr. A. No. 0511005415
)
 Plaintiff Below,)
 Appellee.)

Submitted: October 10, 2007

Decided: November 6, 2007

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

This 6th day of November 2007, it appears to the Court that:

(1) Priscilla Dorsey, Defendant-Appellant, appeals a Superior Court judge's summary dismissal of her motion for postconviction relief under Superior Court Criminal Rule 61(d)(4). Dorsey argues that the trial judge abused his discretion when he denied her postconviction motion because the dismissal effectively prevented her from creating a necessary record for adequate appellate review. Because Dorsey merely asserts conclusory allegations in her motion that conflict with her statements made during her plea colloquy and in her Truth In Sentencing Guilty Plea Form, the trial judge properly summarily dismissed Dorsey's motion. Therefore, we **AFFIRM**.

(2) In November 2005, the State indicted Dorsey on counts of first degree murder, second degree murder, third degree arson, and two counts of first degree reckless endangering. Dorsey pleaded guilty but mentally ill to first degree murder in exchange for the State not pursuing the death penalty and entering *nolle prosequis* on the remaining charges. In September 2006, the trial judge sentenced Dorsey to life imprisonment without the possibility of parole.

(3) In December 2006, Dorsey filed a *pro se* motion for postconviction relief in Superior Court. She asserted the following grounds as basis for relief:

1. I was cocreed [sic] to make the plea he Mr. Goff kept telling me that they where [sic] going to kill me if I didn't take the plea.
2. I was under meds at the time I took the plea it was 300 mg Thorzine [sic] 3 times a day.
3. I have been under psychiatric care sence [sic] I was 14 yrs old and my Doctor (Dr. Bill) was never no infortion [sic] never exceded [sic] from him. He planey [sic] stated that it was my criminal record.

The trial judge first decided that Rule 61 did not procedurally bar Dorsey's motion. Next, the trial judge considered the merits of her motion. He summarily dismissed the motion, under Superior Court Criminal Rule 61(d)(4), after he determined that her claims were conclusory and wholly unsubstantiated.¹ Dorsey now appeals that dismissal.

¹ *State v. Dorsey*, Cr. A. No. IN05-11-0688, 2007 WL 544507 (Del. Super.).

(4) Dorsey argues that the Superior Court judge erred by summarily dismissing her motion for postconviction relief instead of holding an evidentiary hearing allowing her to raise factual questions regarding the reasonableness of her attorney’s representation. This Court reviews the Superior Court judge’s decision on a motion for postconviction relief for abuse of discretion.²

(5) “Rule 61 allows prisoners to attack their sentences collaterally in the court where they were originally tried.”³ To establish a claim for ineffective assistance of counsel under Rule 61, a defendant must set forth a “sufficient factual and legal basis” to support the collateral attack on the conviction.⁴ Specifically, the defendant must demonstrate that his “counsel’s representation fell below an objective standard of reasonableness and that, but for his counsel’s unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.”⁵ “If it plainly appears from the motion . . . that the movant is

² *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

³ *Luby v. State*, 1998 WL 665054, at *1 (Del.).

⁴ Super. Ct. Crim. R. 61(a)(1). On appeal, this Court must first consider whether the procedural filters of Rule 61 are satisfied before addressing any substantive issues. *Stone v. State*, 690 A.2d 924, 925 (Del. 1996). Here, as the trial judge noted, Dorsey procedurally complied with the requirements set forth in Rule 61.

⁵ *Bialach v. State*, 773 A.2d 383, 387 (citing *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984)).

not entitled to relief, the [trial] judge may enter an order for its summary dismissal.”⁶

(6) Dorsey’s first two assertions supporting her motion can be characterized as contentions that her plea was coerced and involuntary because (a) she was threatened; and, (b) her medication prevented her from understanding the proceedings. However, these conclusory assertions, without any factual support, cannot support postconviction relief. “In the absence of clear and convincing evidence to the contrary, [a defendant] is bound by his [or her] answers on the Truth-in-Sentencing Guilty Plea form and by his [or her] sworn testimony prior to the acceptance of the guilty plea.”⁷ Dorsey’s first and second assertions, and the inferences she would have us draw from them, directly contradict her statements made at the plea colloquy and in her Truth In Sentencing Form. First, in her Truth In Sentencing Form, Dorsey attested that “she freely and voluntarily decided to plead guilty to the charge listed in the plea agreement; she had not been promised anything not stated in the written plea agreement; and that neither her attorney, the State, nor anyone else had threatened or forced her to enter this plea.”⁸ Second, the trial judge questioned Dorsey about her medication and her state of mind.

⁶ Super. Ct. Crim. R. 61(d)(4).

⁷ *Sommerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁸ *Dorsey*, Cr. A. No. IN05-0688, Order, at 8 (Feb. 15, 2007).

Dorsey indicated (a) that she took medication on the day of the guilty plea, (b) that the medication helped her understand the proceedings, (c) that she could think clearly allowing her to make the important decision of pleading guilty, (d) that the medication did not impair her in any way, and (e) that she was confident that she could make the important decision of pleading guilty.

(7) In her motion for postconviction relief, Dorsey provides no additional facts or assertions that contradict her earlier statements or that would support the conclusion someone coerced her guilty plea. Without any clear and convincing evidence beyond her conclusory assertions, Dorsey is bound by her statements made at trial.⁹ Accordingly, Dorsey's first two allegations are factually and legally insufficient to attack her guilty plea.

(8) The Superior Court judge dismissed Dorsey's third allegation of ineffective assistance of counsel because he could not discern any factual or legal argument. Neither can we.

(9) Dorsey's claim on appeal that her Rule 61 motion should be remanded to Superior Court for an evidentiary hearing has no merit. Rule 61(h)(1) vests discretion in the trial judge to determine whether an evidentiary hearing is necessary.¹⁰ The trial judge may, in his discretion, appoint counsel for an indigent

⁹ See *Sommerville*, 703 A.2d at 632.

¹⁰ Super. Ct. Crim. R. 61(h)(1); *Maxion v. State*, 686 A.2d 148, 151 (Del. 1996).

movant or direct expansion of the record.¹¹ But because the trial judge determined that Dorsey's claims were entirely conclusory, unsubstantiated, and contradicted her plea colloquy and her Truth In Sentencing Form, he did not abuse his discretion when he declined to hold an evidentiary hearing, appoint counsel, or expand the record. He properly ordered the summary dismissal of Dorsey's postconviction motion.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹¹ Super. Ct. Crim. R. 61(e)(1), (g), (h). See *Horne v. State*, 887 A.2d 973, 974-75 (Del. 2005); *Franklin v. State*, 2006 WL 1374675 (Del. Supr.).