

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID R. BLISS,	§
	§ No. 329, 2010
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0804024336
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 3, 2010

Decided: January 12, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 12th day of January 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, David R. Bliss, filed an appeal from the Superior Court's May 4, 2010 order denying his first motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, in May 2008, Bliss was charged by information with 17 counts of Rape in the First Degree, 27 counts of Unlawful Sexual Contact in the First Degree and 1 count of Continuous Sexual Abuse of a Child in connection with sexual abuse of his stepdaughter

between December 2005 and April 2008. Later that month, Bliss also was charged with Tampering With a Witness and Conspiracy in the Second Degree in connection with a plan devised by Bliss and his wife to have the victim recant and/or fail to appear at trial.

(3) On October 24, 2008, Bliss entered a Robinson plea¹ to 1 count of Rape in the Second Degree, 1 count of Unlawful Sexual Contact in the First Degree and 1 count of Tampering With a Witness. He was sentenced to a total of 26 years of Level V incarceration, to be suspended after 11 years for decreasing levels of supervision. Bliss did not file a direct appeal from his convictions.

(4) In this appeal from the Superior Court's denial of his first motion for postconviction relief,² Bliss claims that a) his counsel provided ineffective assistance in connection with the entry of his guilty plea; b) the prosecutor engaged in misconduct by misrepresenting certain facts concerning the offenses and the charges to which his wife pleaded guilty; and c) the Superior Court judge failed to inform him he had the right to plead not guilty and accepted his plea on an improper legal and factual basis. To the extent that Bliss fails to argue other grounds to support his appeal that

¹ *Robinson v. State*, 291 A.2d 279, 281 (Del. 1972).

² The Superior Court requested defense counsel's affidavit pursuant to Rule 61(g)(2), since this was the defendant's first motion for postconviction relief and he had asserted claims of ineffective assistance of counsel.

were previously raised, those grounds are deemed to be waived and will not be addressed by this Court.³

(5) In order to prevail on a claim of ineffective assistance of counsel within the context of a Robinson plea, the defendant must demonstrate that there is a reasonable probability that, but for his counsel's errors, he would not have pleaded guilty but would have insisted on proceeding to trial.⁴

(6) The transcript of Bliss's plea colloquy reflects clearly that he had discussed the plea extensively with his attorney, was satisfied with his attorney's representation, was questioned thoroughly by the judge regarding his understanding of the consequences of the plea, and that his plea was voluntary. In the absence of clear and convincing evidence to the contrary, Bliss is bound by the representations he made during his plea colloquy.⁵ Moreover, Bliss has presented no evidence, nor does the record reflect, that, but for his counsel's errors, he would not have entered the plea but would have insisted on proceeding to trial. Bliss received a clear benefit by accepting the State's plea bargain. Finally, under Delaware law, a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring

³ *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

⁴ *Albury v. State*, 551 A.2d 53, 59-60 (Del. 1988).

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

prior to the entry of the plea.⁶ As such, Bliss's claims concerning alleged improprieties on the part of the prosecutor and the Superior Court judge are unavailing.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

⁶ *Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988).