

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GERRON MAURICE LINDSEY,	§
	§
Defendant Below-	§ No. 531, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN00-08-2081R1
Plaintiff Below-	§
Appellee.	§

Submitted: November 21, 2002

Decided: January 7, 2003

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

**ORDER**

This 7<sup>th</sup> day of January 2003, 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, Gerron Maurice Lindsey, filed an appeal from the Superior Court's August 28, 2002 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, State of Delaware, has moved to affirm the judgment of the Superior

Court on the ground that it is manifest on the face of Lindsey's opening brief that the appeal is without merit.<sup>1</sup> We agree and AFFIRM.<sup>2</sup>

(2) In April 2000, Lindsey was charged with two counts of Murder in the First Degree, Attempted Murder, and related robbery and weapon offenses stemming from the robbery of a corner grocery store in the City of Wilmington, Delaware, and the shooting of its two owners, one of whom died from his injuries. On April 9, 2002, as the jury for Lindsey's trial was being selected, Lindsey decided to enter a plea of guilty but mentally ill to one count of Murder in the First Degree. In exchange for the plea, the prosecution agreed not to seek the death penalty and dismiss the remaining charges.

(3) Lindsey subsequently moved to withdraw his plea claiming that the plea was involuntary because he was on medication at the time it was entered.<sup>3</sup> In May 2002, the Superior Court denied the motion. In June 2002, following a hearing to establish the basis for the entry of the plea of guilty but mentally ill, the Superior Court accepted the plea and sentenced Lindsey to life imprisonment. In

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<sup>1</sup>SUPR. CT. R. 25(a).

<sup>2</sup>On December 30, 2002, Lindsey also filed a motion requesting the appointment of counsel. In the absence of a compelling reason justifying the appointment of counsel in this appeal, the motion is hereby denied. SUPR. CT. R. 26(b).

<sup>3</sup>The record indicates that Lindsey was taking Zoloft, an antidepressant, and Zyprexa, an antipsychotic or mood stabilizer, at the time of the plea hearing.

August 2002, Lindsey moved for postconviction relief, again arguing that his plea was involuntary because he was on medication at the time he entered the plea.

(4) In his appeal, Lindsey claims that the Superior Court erred in denying his postconviction motion because: a) his medication prevented him from entering a voluntary plea; and b) his counsel provided ineffective assistance by failing to share information about another suspect with him prior to the entry of his plea and failing to inform the Superior Court that another suspect was being investigated by the police. To the extent Lindsey has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court.<sup>4</sup>

(5) Lindsey's first claim is refuted by the record. The transcript of the plea hearing reflects that the Superior Court judge questioned Lindsey closely concerning the medication he was taking and whether it would have any impact on the entry of his plea. Lindsey told the Superior Court that he was taking medications for "depression and sleep," but that he understood the charge against him, had discussed the plea with his counsel, understood that he could be sentenced to life in prison without parole and wished to enter a plea of guilty but

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<sup>4</sup>In his motion for postconviction relief in the Superior Court, Lindsey also argued that his counsel had erroneously represented that he would serve his sentence in a mental hospital rather than in prison.

mentally ill. Based upon its colloquy with Lindsey, the Superior Court accepted his plea as knowing and voluntary.

(6) Lindsey's second claim was not presented to the Superior Court in the first instance and, therefore, may not be considered by this Court on appeal.<sup>5</sup>

Lindsey's allegation that he was prejudiced because his counsel failed to inform him about another suspect has no factual basis in any case, since the record reflects that it was Lindsey himself who initially told police about the other suspect.

Moreover, the signed guilty plea form and the transcript of the colloquy with the Superior Court reflect that Lindsey had discussed the plea and its consequences with his counsel and was satisfied with his counsel's representation. In the absence of clear and convincing evidence to the contrary, Lindsey is bound by those representations.<sup>6</sup>

(7) It is manifest on the face of Lindsey's 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.

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<sup>5</sup>SUPR. CT. R. 8.

<sup>6</sup>*Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

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/ Myron T. Steele

Justice