

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEFFREY ROSE,	§
	§
Plaintiff Below-	§ No. 285, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
MICHAEL MODICA,	§ in and for New Castle County
	§ C.A. No. 02C-04-252
Defendant Below-	§
Appellee.	§

Submitted: October 11, 2002

Decided: October 18, 2002

Before **WALSH, HOLLAND** and **BERGER**, Justices

**ORDER**

This 18th day of October 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Jeffrey Rose, filed an appeal from the Superior Court's April 25, 2002 order dismissing his legal malpractice complaint as legally frivolous. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In January 1999, Rose pleaded guilty to drug and weapon charges. Among other things, he was sentenced to a 4-year Level V prison term for the weapon conviction. At a violation of probation hearing in July

2000,<sup>1</sup> the Superior Court re-imposed Rose's 4-year Level V sentence for the weapon conviction. In February 2001, Rose filed a motion for postconviction relief claiming that he was sentenced for a crime to which he did not plead guilty and that his counsel provided ineffective assistance. In its June 7, 2001 order, the Superior Court, believing that Rose had been sentenced improperly, reduced his sentence to 2 years Level V incarceration, but did not dispose of Rose's claim of ineffective assistance of counsel.

(3) On February 4, 2002, this Court affirmed the Superior Court's order and remanded the matter for disposition of Rose's ineffective assistance of counsel claim.<sup>2</sup> On remand, the Superior Court determined that Rose's original 4-year sentence was proper, but in light of inconsistencies in the record relating to the weapon charge, permitted the reduced 2-year sentence to stand. Finding no prejudice, the Superior Court also denied Rose's claim of ineffective assistance of counsel. That decision was affirmed by this Court on appeal.<sup>3</sup>

(4) On April 23, 2002, Rose filed a legal malpractice complaint against his counsel claiming, among other things, that his counsel had

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<sup>1</sup>Rose had absconded prior to beginning his prison term.

<sup>2</sup>*Rose v. State*, Del. Supr., No. 358, 2001, Holland, J. (Feb. 4, 2002).

<sup>3</sup>*Rose v. State*, Del. Supr., No. 264, 2002, Holland, J. (Oct. 18, 2002).

pressured him to plead guilty to a charge for which he had not been indicted and “petitioned the Superior Court for a result adverse to the plaintiff.” The Superior Court summarily dismissed the complaint as legally frivolous,<sup>4</sup> stating that there was no civil remedy for legal malpractice available to Rose following the Superior Court’s denial of his ineffective assistance of counsel claim and that his claim was barred by the statute of limitations in any case.

(5) The standards for proving ineffective assistance of counsel in a criminal proceeding are equivalent to the standards for proving legal malpractice in a civil proceeding.<sup>5</sup> If there is no claim against counsel in a criminal case, there is also no civil claim against counsel for legal malpractice.<sup>6</sup> At the time Rose’s complaint was filed, the Superior Court had already denied his claim of ineffective assistance of counsel pursuant to Rule 61.<sup>7</sup> The Superior Court, thus, properly dismissed Rose’s legal malpractice complaint because his claim already was the subject of a Rule 61 ineffective assistance of counsel claim.<sup>8</sup>

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<sup>4</sup>DEL. CODE ANN. tit. 10, § 8803(b).

<sup>5</sup>*Sanders v. Malik*, 711 A.2d 32, 34 (Del. 1998).

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

<sup>7</sup>A decision this Court has since affirmed. *Rose v. State*, Del. Supr., No. 264, 2002, Holland, J. (Oct. 18, 2002).

<sup>8</sup>We do not reach the question of whether Rose’s claim was barred by the statute of limitations.

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

BY THE COURT:

/s/ Randy J. Holland  
Justice