IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY S. DORIO,	§	
	§	No. 156, 2012
Defendant-Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. ID No. 0909016967
	§	
Plaintiff-Below,	§	
Appellee.	§	

Submitted: September 21, 2012
Decided: December 18, 2012

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

O R D E R

This 18th day of December 2012, upon consideration of the briefs of the parties and the Superior Court record, it appears to the Court that:

(1) The appellant, Anthony S. Dorio, appeals from the Superior Court judgment denying his first motion for postconviction relief. We conclude that there is no merit to the appeal and affirm the Superior Court judgment.

(2) In October 2009, Dorio was indicted on charges including Burglary in the First Degree, Assault in the First Degree, Assault in the Second Degree, and two counts of Possession of a Deadly Weapon During the Commission of a Felony. Dorio's indictment arose from an incident on

September 20, 2009, when he allegedly broke into an apartment and assaulted three people, including his estranged wife, with an aluminum baseball bat.

(3) On June 7, 2010, Dorio pled guilty to Assault in the First Degree, Burglary in the Second Degree, Assault in the Third Degree, and Terroristic Threatening. On September 3, 2010, after a presentence investigation, Dorio was sentenced to a total of twenty-three years at Level V (with a two-year mandatory minimum), suspended after thirteen years for seven years at Level IV, suspended after six months for concurrent terms of probation. On direct appeal, we affirmed the Superior Court judgment under Supreme Court Rule 26(c).[1] Dorio did not raise any claims for the Court's consideration.

(4) On June 6, 2011, Dorio moved for postconviction relief under Superior Court Criminal Rule 61. Dorio claimed that his guilty plea was involuntary, as a result of a defective plea colloquy and ineffective assistance of counsel.[2] Specifically, Dorio argues that, when he was consulting with his defense counsel at a recess during the plea colloquy, his

[1] *Dorio v. State*, 2011 WL 1161741 (Del. Mar. 29, 2011).

[2] Dorio also raised a sentencing issue. He has not pursued the issue, however, on appeal, and the issue is therefore abandoned and waived. *See Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

defense counsel promised him that the Superior Court would sentence him to no more than eight years of incarceration. According to Dorio, upon resuming the plea colloquy after the recess, the Superior Court erred by failing to inquire if, during the recess, Dorio's defense counsel had promised him what the court's sentence would be.

(5) The Superior Court directed that defense counsel file an affidavit in response to Dorio's ineffective assistance of counsel claim. Defense counsel filed an affidavit denying that he had promised Dorio a maximum sentence of no more than eight years. After defense counsel filed his affidavit, Dorio filed a "reply affidavit" and a supplemental memorandum.

(6) By opinion dated February 27, 2012, the Superior Court denied Dorio's postconviction motion. Based upon defense counsel's affidavit, the transcribed plea colloquy, the plea agreement, and the truth-in-sentencing forms signed by Dorio, the Superior Court found that Dorio's claims of a defective plea colloquy and ineffective counsel were without merit. This appeal followed.

(7) On appeal, Dorio continues to argue that his defense counsel's "implied promise" and the court's defective plea colloquy rendered his

guilty plea involuntary. Dorio also contends that the Superior Court should have conducted an evidentiary hearing on his ineffective assistance claim.

(8) We reject Dorio's claim that the guilty plea colloquy was defective. The plea hearing transcript reflects that during the plea colloquy, Dorio indicated that he wanted more time to speak to his counsel. The Superior Court recessed the hearing to allow Dorio to discuss the matter with his counsel. When the proceeding resumed after the recess, Dorio told the Superior Court that the recess had given him sufficient time to discuss the matter with his counsel, and that he wanted to plead guilty.

(9) It appears from the transcript that over the course of the hearing, the Superior Court thoroughly questioned Dorio on his understanding of the terms of the plea agreement and the consequences he faced. Dorio told the Superior Court that no one had promised or guaranteed him what the sentence would be and that he was satisfied with his counsel's representation. In the absence of clear and convincing evidence to the contrary, Dorio is bound by the representations he made during the plea colloquy.[3]

(10) To prevail on a claim of ineffective assistance of counsel, Dorio must demonstrate that "counsel's representation fell below an objective

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

standard of reasonableness."[4] In this case, the Superior Court accepted defense counsel's affidavit as credible and rejected Dorio's claim that his defense counsel had promised him a sentence of no more than eight years. Under these circumstances, we are satisfied that the Superior Court properly rejected Dorio's ineffective assistance claim without an evidentiary hearing.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

[4] *Albury v. State*, 551 A.2d 53, 58 (Del. 1988).