

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NATHANIEL L. JOHNSON,	§
	§
Defendant Below-	§ No. 451, 2013
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 1008024349
Plaintiff Below-	§
Appellee.	§

Submitted: November 8, 2013
Decided: December 24, 2013

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

ORDER

This 24th day of December 2013, upon consideration of the opening brief, the motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Nathaniel Johnson, filed this appeal from the Superior Court’s denial of his motion for postconviction relief. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Johnson’s opening brief that the appeal is without merit. We agree and affirm.

(2) Johnson was indicted in October 2010 on thirteen criminal charges. The charges stemmed from Johnson breaking into his ex-girlfriend’s home and strangling her from behind and later attempting a second break-in by throwing a rock through the victim’s window and threatening to kill her. The victim’s two

children were present during the crimes. Johnson faced a possible life sentence as a habitual offender if convicted of a felony. On March 23, 2011, the first day of his scheduled trial, Johnson pled guilty to one count each of Burglary in the Second Degree and Strangulation. The State dismissed the remaining eleven counts of the indictment. The Superior Court sentenced Johnson to a total period of thirteen years at Level V incarceration, to be suspended after serving ten years in prison for one year at Level III probation. Johnson did not file a direct appeal.

(3) Instead, on April 15, 2011, Johnson filed a motion for modification of sentence, which the Superior Court denied. On May 10, 2011, Johnson filed a second motion for modification of sentence, which also was denied. On March 16, 2012, he filed a motion for postconviction relief alleging ineffective assistance of counsel and prosecutorial misconduct. The Superior Court referred the matter to a Commissioner for a report and recommendation. The Commissioner directed responses from Johnson's trial counsel and from the State. Following a complete review of the record, the Commissioner found the sworn affidavit of defense counsel to be more credible than Johnson's vague and unsubstantiated allegations of ineffective assistance. Moreover, the Commissioner noted that the transcript of Johnson's plea colloquy and sentencing reflected Johnson's sworn statements that he had fully discussed the guilty plea and its consequences, that he was pleading guilty knowingly and voluntarily, and that he was satisfied with his counsel's

representation. Under the circumstances, the Commissioner concluded that Johnson's postconviction claims had no merit. A judge of the Superior Court adopted the Commissioner's findings and recommendations and denied Johnson's motion. This appeal followed.

(4) Johnson enumerates four arguments in his opening brief on appeal. First, he contends that his trial counsel was ineffective. Second, he asserts that the State engaged in prosecutorial misconduct for threatening to seek a life sentence if the jury found Johnson guilty of a felony. Third, he contends that the trial judge was biased and engaged in misconduct. Finally, he argues that the Superior Court erred in denying him transcripts at State expense.

(5) To establish a claim of ineffective assistance of counsel in the context of a guilty plea, a defendant must demonstrate that: (a) counsel's conduct fell below an objective standard of reasonableness; and (b) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial, resulting in his acquittal.¹ A defendant must make concrete allegations of cause and actual prejudice to substantiate a claim of ineffective assistance of counsel or else risk summary dismissal.²

¹ *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985).

² *Younger v. State*, 580 A.2d 552, 556 (Del. 1980).

(6) In this case, we agree with the Superior Court that Johnson's conclusory allegations of ineffective assistance are insufficient to establish that counsel's representation was objectively unreasonable or prejudicial. The record reflects that Johnson thoroughly discussed the State's plea offer with his counsel, that his plea was knowing and voluntary, and that he was satisfied with counsel's representation. In the absence of clear and convincing evidence to the contrary, Johnson is bound by his sworn statements.³ Accordingly, we find no merit to Johnson's claim that his guilty plea was the result of his counsel's ineffective assistance and that, but for his counsel's errors, he would have gone to trial and been acquitted.

(7) Furthermore, we find no merit to Johnson's conclusory allegations that the prosecutor and the trial judge engaged in misconduct. Johnson contends that the prosecutor threatened him with a life sentence in order to coerce his guilty plea. A claim of coercion in the plea bargaining process can only be substantiated, however, if the prosecutor threatens to take action that is not legally authorized.⁴ In this case, it was true that Johnson faced a possible life sentence as a habitual offender if he was convicted of another felony. The prosecutor's statement was true and thus legally authorized. Moreover, a defendant does not have a right to

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

⁴ *Dolby v. State*, 2012 WL 686027 (Del. Mar. 2, 2012).

free transcript in order to pursue postconviction relief in the absence of a showing of good cause.⁵ We find no abuse of the Superior Court's discretion in denying Johnson's motion for transcripts at State expense. His claim that the Superior Court engaged in judicial misconduct by denying him free transcripts simply has no merit.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

⁵ *Moore v. State*, 2013 WL 3179158 (Del. June 19, 2013).