

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|---|---------------------------------|
| DONALD OAKES, | § | |
| | § | No. 590, 2012 |
| Defendant Below, | § | |
| Appellant, | § | Court Below—Superior Court |
| | § | of the State of Delaware in and |
| v. | § | for New Castle County |
| | § | |
| STATE OF DELAWARE, | § | |
| | § | |
| Plaintiff Below, | § | Cr. ID No. 1009008282 |
| Appellee. | § | |

Submitted: March 8, 2013

Decided: May 23, 2013

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 23rd day of May 2013, upon consideration of the briefs of the parties and the Superior Court record, it appears to the Court that:

(1) The appellant, Donald Oakes (“Oakes”), filed this appeal from the Superior Court’s denial of his first motion for postconviction relief under Superior Court Criminal Rule 61 (“Rule 61”). We conclude there is no merit to the appeal and affirm the Superior Court’s judgment.

(2) By grand jury indictment on November 8, 2010, followed by a reindictment on March 14, 2011, Oakes was charged with Assault in the Second Degree, Possession of a Deadly Weapon During the Commission of a Felony (“PDWDCF”), Malicious Interference with Emergency

Communications, and Criminal Mischief. On May 3, 2011, the Superior Court dismissed the charges without prejudice when the victim failed to appear for trial. By order dated June 22, 2011, the Superior Court vacated the dismissal, and the case was rescheduled for trial.

(3) On September 13, 2011, the first day of Oakes' trial, Oakes met with his defense counsel but then left the courthouse. The resulting *capias* was returned on October 4, 2011.

(4) On October 24, 2011, Oakes was reindicted on the charges of Assault in the Second Degree, PDWDCF, Malicious Interference with Emergency Communications, and Criminal Mischief. Oakes was also charged with Aggravated Menacing, PDWDCF, Noncompliance with Bond Conditions, and Act of Intimidation (hereinafter "the additional charges").

(5) On November 16, 2011, Oakes pled guilty to Aggravated Menacing and PDWDCF. As part of the plea agreement, the State *nolle prossed* the remaining charges. The State also agreed not to seek to have Oakes sentenced as a habitual offender and to cap its sentence recommendation to four years at Level V. On February 17, 2012, the Superior Court sentenced Oakes to a total of five and one-half years at Level V suspended after four years for decreasing levels of probation.

(6) On April 10, 2012, Oakes filed a motion for postconviction relief. Oakes challenged the additional charges sought in the October 24, 2011 reindictment and alleged that his defense counsel's failure to challenge the additional charges was ineffective assistance of counsel.

(7) Oakes' postconviction motion was referred to a Superior Court commissioner who directed that the State file a response to the motion and that Oakes' defense counsel file an affidavit responding to the allegations of ineffective assistance of counsel. After those pleadings were filed, Oakes filed an "amendment" to the postconviction motion followed by a reply to the State's response.

(8) In a report dated September 11, 2012, the commissioner recommended that the postconviction motion should be denied. By order dated October 10, 2012, Superior Court adopted the report and recommendation and denied Oakes' motion for postconviction relief. This appeal followed.

(9) Having carefully considered the parties' briefs, we conclude that the denial of Oakes' postconviction motion should be affirmed. The Superior Court appropriately denied Oakes' ineffective counsel claim as without merit after determining that Oakes' decision to accept the plea offer was a "rational choice" that was made after defense counsel fully advised

him of “all the potential risks, defenses and benefits, and all the potential issues in the case.” Significantly, Oakes did not allege in his postconviction motion and does not allege on appeal (nor does the record reflect) that his guilty plea was unknowing and/or involuntary. A voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea.*

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

* See *Smith v. State*, 2004 WL 120530 (Del. Jan. 15, 2004) (citing *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997)).