IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERIC AMARO,	§
	§ No. 236, 2013
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 1207002417
Plaintiff Below-	§
Appellee.	§

Submitted: November 8, 2013 Decided: January 2, 2014

Before HOLLAND, BERGER, and JACOBS, Justices.

ORDER

This 2^{nd} day of January 2014, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

of guilty to one count of Aggravated Possession of Heroin¹ as a lesser included offense to Drug Dealing.² The Superior Court sentenced Amaro as a habitual offender pursuant to 11 Del. C. § 4214(a) to five years at Level V incarceration, with credit for 257 days served, followed by six months at

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¹ Del. Code Ann. tit. 16, § 4756 (Supp. 2012).

² *Id.* § 4754(1).

Level IV work release.³ This Court granted Amaro's request to dismiss his appointed counsel and to proceed pro se on appeal. After careful consideration of the parties' respective contentions, we find no merit to Amaro's appeal. Accordingly, we affirm the Superior Court's judgment.

The record reflects that Amaro was serving a probationary (2) sentence in July 2012. On July 3, 2012, members of the Governor's Task Force conducted an administrative search of Amaro's Sussex County residence where they discovered thirteen bags of suspected heroin hidden behind a wall hanging and another four bags of suspected heroin in Amaro's pocket. The contents of the bags field tested positive for heroin with a combined approximate weight of 1.825 grams. Amaro was arrested and charged with Drug Dealing based on the weight and packaging of the drugs. The seized evidence was later tested by a forensic chemist and was determined to be heroin with a combined weight of 1.610 grams. The forensic report was provided to defense counsel on September 10, 2012. On November 27, 2012, Amaro pled guilty to Aggravated Possession of Heroin and was sentenced as a habitual offender to five years in prison.

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³ Amaro initially was sentenced on January 11, 2013. After Amaro filed an untimely appeal from that order, this Court remanded the matter to the Superior Court for reimposition of the sentence, which occurred on May 1, 2013, in order to give Amaro the opportunity to file a timely notice of appeal.

- (3) Amaro, acting pro se, has enumerated three issues in his opening brief on appeal. First, he contends that his guilty plea was not entered knowingly and voluntarily because counsel never informed him of the forensic chemist's report. Second, Amaro contends that his trial counsel provided constitutionally ineffective assistance. Third, he alleges various due process violations because the State suppressed evidence, because there was insufficient evidence to support his convictions, and because the Superior Court erred in resentencing him on May 1, 2013.
- (4) Amaro's first two issues on appeal are interrelated and essentially claim that his guilty plea was not knowing and voluntary because of his trial counsel's ineffective assistance. This Court, however, will not consider such a claim on direct appeal when it has not been properly raised to, and considered on the merits by, the Superior Court in the first instance.⁴ Amaro may pursue such claims in the Superior Court by filing a motion for postconviction relief.
- (5) Amaro's other issue on appeal is a conglomeration of alleged due process violations challenging his guilty plea and his May 2013 resentencing. Amaro first accuses the State of withholding evidence. The record, however, reflects that the State provided defense counsel with the

⁴ Johnson v. State, 962 A.2d 233, 234 (Del. 2008).

forensic chemist's report over two months before Amaro's scheduled trial.

Amaro has not established that there was any other documentary evidence in existence that was withheld by the State. Accordingly, we reject this unsupported allegation.

- (6) Amaro next contends that his guilty plea violated due process because there was insufficient evidence to support it. The transcript of the guilty plea colloquy, however, belies this claim. At his guilty plea hearing, Amaro told the trial judge under oath that he was pleading guilty because he was, in fact, guilty of the charge. In the absence of clear and convincing evidence to the contray, Amaro is bound by that sworn statement.⁵
- (7) Amaro's third alleged due process violation is difficult to understand. He appears to contend when this Court remanded his case to the Superior Court for reimposition of sentence, he should have been permitted to file a "pre-trial" motion⁶ concerning the State's alleged failure to disclose evidence. Amaro is incorrect. This Court ordered the Superior Court to reimpose Amaro's sentence for the sole purpose of allowing Amaro to file a timely notice of appeal.⁷ The remand was a mere formality for Amaro's

⁵ Somerville v. State, 703 A.2d 629, 632 (Del. 1997).

⁶ We assume Amaro means a motion to withdraw his plea under Superior Court Criminal Rule 32(d).

⁷ Amaro v. State, Del. Supr., No. 63, 2013, Ridgely, J. (Mar. 13, 2013).

benefit so that he did not lose his opportunity to file a direct appeal. We did not vacate the Superior Court's original sentence. Thus, the remand did not provide Amaro with a new opportunity to file a motion to withdraw his plea under Superior Court Criminal Rule 32(d).

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

BY THE COURT:

/s/ Carolyn Berger
Justice