

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES E. THOMAS,	§
	§
Defendant Below,	§ No. 287, 2024
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID Nos. 2010012425
	§ 2103016186 (K)
Appellee.	§

Submitted: October 2, 2024
Decided: December 16, 2024

Before **TRAYNOR, LEGROW, and GRIFFITHS**, Justices.

ORDER

After considering the opening brief, the motion to affirm, and the record on appeal, it appears to the Court that:

(1) The appellant, James E. Thomas, filed this appeal from a Superior Court order adopting the Commissioner’s report and recommendation and denying his first motion for postconviction relief under Superior Court Criminal Rule 61. The State of Delaware has filed a motion to affirm the judgment below on the basis that it is manifest on the face of Thomas’s opening brief that his appeal is without merit. We agree and affirm.

(2) In May 2021, a grand jury indicted Thomas for multiple drug and weapon charges in Cr. ID No. 2010012425. These charges arose from police

observing Thomas conduct an illegal drug transaction on October 26, 2020 and discovering he possessed more than seventy bags of heroin and a loaded gun. In June 2021, a grand jury re-indicted Thomas for the charges in Cr. ID No. 2010012425 and indicted him for weapon, resisting arrest, and other charges in Cr. ID No. 2103016186. These charges arose from a March 29, 2021 traffic stop during which Thomas tried to flee police and there was a loaded gun in his car.

(3) On March 16, 2022, Thomas pleaded guilty to possession of a firearm during the commission of a felony (“PFDCF”) in Cr. ID No. in 2010012425 and resisting arrest in Cr. ID No. 2103016186 in exchange for dismissal of the other charges. The parties stipulated that the minimum sentence for PFDCF was five years of Level V incarceration based on Thomas’s criminal history. The State agreed not to seek habitual offender sentencing and to cap its sentencing recommendation for unsuspended Level V time at fifteen years. At the parties’ request, the court ordered a presentence investigation. On September 13, 2022, the Superior Court sentenced Thomas as follows: (i) for PFDCF, twenty-five years of Level V incarceration, suspended after fifteen years for decreasing levels of supervision; and (ii) for resisting arrest, two years of Level V incarceration, suspended for Level III probation.

(4) On October 13, 2022, Thomas filed a timely motion for postconviction relief under Rule 61. He argued, among other things, that his counsel was

ineffective. Thomas also moved for appointment of counsel, which the Superior Court Commissioner denied. After obtaining the affidavit of Thomas's counsel and the State's response to the motion for postconviction relief, the Commissioner recommended that the Superior Court deny Thomas's motion for postconviction relief. On June 24, 2024, the Superior Court issued an order adopting the Commissioner's report and recommendation and denying Thomas's motion for postconviction relief. This appeal followed.

(5) We review the Superior Court's denial of a motion for postconviction relief for abuse of discretion.¹ We review constitutional claims, including claims of ineffective assistance, *de novo*.² The Court considers the procedural requirements of Rule 61 before addressing any substantive issues,³ but in most cases claims of ineffective assistance raised in a timely postconviction motion are not procedurally barred.⁴

(6) Thomas's arguments on appeal may be summarized as follows: (i) his counsel was ineffective; and (ii) the Superior Court should have granted his motion for appointment of counsel. Although the Commissioner incorrectly stated that Rule

¹ *Baynum v. State*, 211 A.3d 1075, 1082 (Del. 2019).

² *Id.*

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁴ *Cephas v. State*, 277 A.3d 936, 2022 WL 1552149, at *2 (Del. May 17, 2022) (TABLE) (citing *Green v. State*, 238 A.3d 160, 175 (Del. 2020)).

61(i)(3) barred Thomas's claims of ineffective assistance, the Commissioner nonetheless addressed the merits of those claims.⁵

(7) To prevail on his ineffective-assistance-of-counsel claims, Thomas had to demonstrate that: (i) his counsel's representation fell below an objective standard of reasonableness; and (ii) but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁶ There is "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."⁷ "A reasonable probability is a probability sufficient to undermine confidence in the outcome."⁸ In the context of a plea agreement, the defendant must show that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."⁹

(8) Thomas argues, as he did below, that his counsel was ineffective because he failed to move to suppress evidence found during execution of the search warrant in Cr. ID No. 2010012425 or tell him that he could receive a fifteen-year Level V sentence for PFDCF. As the Commissioner recognized, Thomas did not

⁵ *Green*, 238 A.3d at 175 (rejecting the Commissioner's conclusion that Rule 61(i)(3) barred the appellant's ineffective assistance claims, but concluding that reversal was unnecessary because the Commissioner and Superior Court had addressed the merits of those claims).

⁶ *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

⁷ *Id.* at 689.

⁸ *Id.* at 694.

⁹ *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

provide any support for his claim that counsel should have filed a motion to suppress. Thomas told the Superior Court during the guilty plea colloquy that he understood the evidence underlying the charges against him and his legal rights concerning suppression of that evidence. The record reflects that Thomas entered a knowing, intelligent, and voluntary plea, which constituted a waiver of any alleged errors or defects occurring before the entry of the plea.¹⁰

(9) Thomas has provided more details on appeal concerning the alleged basis for a motion to suppress, but he still fails to show a reasonable probability that he would have insisted on going to trial but for his counsel's errors. Thomas's arguments do not acknowledge that before obtaining and executing the search warrant, the police saw him conducting a drug deal and found him with more than seventy bags of suspected heroin. He also ignores that the babysitter who was with his children consented to a search of her bags where the police found a gun that both the babysitter and Thomas said belonged to him. In addition, by pleading guilty, Thomas reduced his sentencing exposure to twenty-seven years of Level V time and obtained the State's agreement to dismiss all but two charges in these cases, not to seek habitual-offender sentencing, and to cap its sentencing recommendation at fifteen years of unsuspended Level V time.

¹⁰ *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003)

(10) As to Thomas's contention that his counsel failed to tell him that he could be sentenced to fifteen years of unsuspended Level V time, the record does not support this claim. The plea paperwork that Thomas signed included the State's agreement not to seek more than fifteen years of unsuspended Level V time and the sentencing range of five to twenty-five years of Level V incarceration for PFDCF. In his affidavit, Thomas's counsel stated that he advised Thomas that he faced a sentence of five to twenty-five years of Level V incarceration for PFDCF. Thomas's counsel repeated this sentencing range during the plea colloquy and stated that the State had agreed not to request more than fifteen years of unsuspended Level V time. Although counsel told Thomas that it would be reasonable for him to expect a Level V sentence of five to seven years if the presentence investigation went well and a Level V sentence of ten years in the worst case scenario, Thomas was fully apprised that he faced up to twenty-five years of Level V time for PFDCF and that the State would be seeking not less than fifteen years of Level V time when he pleaded guilty. He has not shown that his counsel's performance was objectively unreasonable or that he would have insisted on going to trial—where he faced significantly more Level V time and potentially habitual offender sentencing—but for his counsel's advice concerning the possible PFDCF sentence.

(11) Thomas argues for the first time on appeal that his counsel was ineffective for failing to file a direct appeal. In the absence of plain error, which we

do not find here, we decline to review this claim.¹¹ The Superior Court did not err in finding Thomas's claims of ineffective assistance without merit.

(12) Nor did the Superior Court err in denying Thomas's motion for appointment of postconviction counsel. Under Rule 61(e)(3), the Superior Court may appoint counsel in postconviction proceedings following a guilty plea only where, among other things, the movant sets forth a substantial claim of ineffective assistance. Thomas did not satisfy the requirements of Rule 61(e)(3) for appointment of postconviction counsel.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Abigail M. LeGrow
Justice

¹¹ Supr. Ct. R. 8. Plain error "is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice." *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).