

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GERRON MAURICE LINDSEY,	§	
	§	No. 375, 2007
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE	§	ID # 0002019767
	§	
Plaintiff Below,	§	
Appellee.	§	
	§	

Submitted: October 18, 2007

Decided: January 8, 2008

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

ORDER

This 8th day of January 2008, upon consideration of the briefs of the parties it appears to the Court that:

(1) Defendant-Appellant Gerron Lindsey appeals the Superior Court's denial of his third motion for postconviction relief. Lindsey argues that the Superior Court misunderstood his claims and improperly denied him relief. We find no merit to this appeal and affirm.

(2) The record reflects that Lindsey pled guilty but mentally ill in June 2002 to one count of first degree murder. In exchange for his guilty plea, the State agreed not to seek the death penalty and dismiss the remaining charges.¹ Lindsey subsequently filed a motion for post-conviction relief on August 1, 2002 arguing that his plea was involuntary because he was on medication at the time he entered the plea. This Court found that the Superior Court did not abuse its discretion in denying his motion.² Lindsey filed a second motion for postconviction relief, in which he asserted ineffective assistance of counsel. The Superior Court denied his second motion and this Court affirmed that ruling in 2004.³ In doing so we noted that Lindsey “does not even attempt to establish the necessary element of prejudice” and that “we do not find that consideration of Lindsey’s claims of ineffective assistance are warranted in the interest of justice or under the fundamental fairness exception of Rule 61(i)(5).⁴

(3) On December 29, 2006 Lindsey filed a third motion for postconviction relief in Superior Court, seeking to withdraw his guilty plea on the ground of newly-discovered evidence. He claims that this evidence is substantive and exculpatory evidence from two witnesses that neither the police nor his

¹ *Lindsey v. State*, 2003 WL 98784, at *1 (Del. Supr.).

² *Id.* at *2.

³ *Lindsey v. State*, 2004 WL 1280468 (Del. Supr.).

⁴ *Id.* at *1.

counsel located. The Superior Court summarily dismissed the motion after finding that the evidence was merely cumulative.⁵ This appeal followed.

(4) In general, Rule 61(i)(2) requires a petitioner to raise all available grounds for relief in the first postconviction petition. “Claims that are not raised in a petitioner’s first postconviction motion will be deemed waived unless the petitioner can establish that consideration of the claim is warranted in the interest of justice or there is a colorable claim of a constitutional violation that undermined the fundamental fairness of the proceedings leading to the final judgment.”⁶ These exceptions are narrow and have been applied only in limited circumstances.⁷ We review the Superior Court’s decision on an application for postconviction relief for abuse of discretion.⁸

(5) Lindsey claims that because the Superior Court misunderstood and misstated his contention and that his counsel failed to locate or interview two potentially exculpatory witnesses, this Court should reverse. Particularly, Lindsey argues that these two witnesses would testify that he was across the street at the time of the shooting. The State produced evidence from Lindsey’s trial counsel that he had met with one of these witnesses on several occasions, but the witness

⁵ *State v. Lindsey*, No. 0002019767 (Del. Super. Ct. June 30, 2007).

⁶ *Lindsey*, 2004 WL 1280468, at *1 (citing *Younger v. State*, 580 A.2d 552, 554-55) (Del. 1990)).

⁷ *Id.*

⁸ *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

never gave any indication that she had any information to help Lindsey at the guilt phase of his trial. Lindsey's counsel stated that this witness would have been called as a witness in the event of a penalty hearing. Regarding the second witness, trial counsel explained that Lindsey never provided him or his private investigators with her name. Even if he had, the evidence would have been cumulative to other testimony presented at trial. We find no abuse of discretion by the Superior Court in dismissing Lindsey's third motion for postconviction relief.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice