

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAWRENCE JOHNSON,	§
	§
Defendant Below-	§ No. 641, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 9506017339
Plaintiff Below-	§
Appellee.	§

Submitted: October 26, 2007

Decided: January 18, 2008

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

**ORDER**

This 18<sup>th</sup> day of January 2008, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Lawrence Johnson, appeals from the Superior Court's denial of his first motion for postconviction relief. We find no merit to the appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that a Superior Court jury convicted Johnson in 1996 of two counts of felony murder, burglary, robbery, and related weapon offenses. The jury acquitted Johnson of intentional murder, conspiracy, and four counts of possession of a firearm during the

commission of a felony. The Superior Court sentenced Johnson to life in prison. This Court affirmed Johnson's convictions on direct appeal.<sup>1</sup>

(3) Johnson filed his first petition for postconviction relief in April 2000. Thereafter, his lawyer withdrew from the representation and, in April 2001, new counsel filed an addendum to the motion for postconviction relief raising additional claims. Johnson's second lawyer, however, also withdrew her representation. In August 2003, a third lawyer entered an appearance on Johnson's behalf. The Superior Court ordered new counsel to identify all issues that Johnson was pursuing in his petition. Counsel identified three claims, all asserting ineffective assistance of trial counsel. The Superior Court directed Johnson's trial counsel to respond to the three claims, pursuant to Superior Court Criminal Rule 61(g)(2). Thereafter, upon the completion of briefing, the Superior Court held a hearing on the claims. The Superior Court denied Johnson's motion on November 22, 2006, and this appeal followed.

(4) Johnson raises three issues in his opening brief on appeal. He asserts that the Superior Court abused its discretion by: (i) denying his motion for postconviction relief; (ii) failing to address all the issues raised

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<sup>1</sup> *Johnson v. State*, 709 A.2d 1158 (Del. 1998).

by all three of Johnson's postconviction lawyers; and (iii) denying his motion for a transcript at State expense.

(5) This Court reviews the Superior Court's denial of a motion for postconviction relief for abuse of discretion.<sup>2</sup> To prove his claims of ineffective assistance of counsel, Johnson was required to establish: (a) that his defense counsel's representation fell below an objective standard of reasonableness; and (b) that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the case would have been different.<sup>3</sup> There is a strong presumption that counsel's conduct was professionally reasonable.<sup>4</sup>

(6) Johnson asserted three grounds to support his claim of ineffective assistance of counsel. First, he argued that trial counsel erred by failing to object to the jury instructions regarding accomplice liability. Second, he contended that trial counsel erred by failing to cross-examine a prosecution witness, Dennis Thomas, regarding charges against him and charges that could have been made against him arising from Thomas' alleged involvement in the robbery and murder. Finally, Johnson asserted

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<sup>2</sup> *Outten v. State*, 720 A.2d 547, 551 (Del. 1998).

<sup>3</sup> *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

<sup>4</sup> *Albury v. State*, 551 A.2d 53, 59 (Del. 1988).

that trial counsel erred in failing to object to use of the term “lookout” to describe Johnson’s role in the crimes.

(7) The Superior Court rejected all three claims. With respect to counsel’s failure to object to the jury instruction, the trial court concluded that defense counsel had committed no error because there was no legal basis to object to the accomplice liability instruction. With respect to counsel’s failure to cross-examine Thomas and counsel’s failure to object to the term “lookout,” the Superior Court concluded that these were reasonable strategic decisions by trial counsel and that Johnson had failed to overcome the presumption of reasonableness.<sup>5</sup> Furthermore, given the abundance of eyewitness and physical evidence against Johnson and the jury’s acquittal on the intentional murder charge, the Superior Court concluded that Johnson was unable to establish that the outcome of the case would have been different if trial counsel had made different strategic choices.<sup>6</sup> We agree with these conclusions. Accordingly, we find that the Superior Court did not abuse its discretion in denying Johnson’s motion for postconviction relief.

(8) We also find no merit to Johnson’s contention that the Superior Court erred in failing to address all of his postconviction claims below. The

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<sup>5</sup> See *Albury v. State*, 551 A.2d at 59.

<sup>6</sup> See *Strickland v. Washington*, 466 U.S. at 688.

record is manifest that Johnson's counsel of record raised three, and only three, postconviction claims below. These three claims were the only claims addressed in the affidavits submitted by trial counsel and were the only three claims to be briefed and argued to the Superior Court. To the extent Johnson's prior lawyers may have raised other issues that Johnson's counsel of record chose not to brief or argue, those claims were waived.<sup>7</sup> Accordingly, we conclude that the Superior Court did not err in failing to address claims that Johnson's counsel made a tactical decision not to argue.

(9) Finally, we find no abuse of discretion in the Superior Court's denial of Johnson's request for transcript at State expense. Although an indigent defendant is entitled to free transcripts to pursue a direct appeal,<sup>8</sup> there is no such right to free transcript to pursue a postconviction motion, absent a showing of just cause.<sup>9</sup> In this case, the transcript Johnson sought was of an evidentiary hearing held on December 20, 2005, prior to the filing of his counsel's legal memorandum in support of Johnson's postconviction claims. Johnson's counsel did not deem the transcript necessary to presenting her arguments below. Under these circumstances, we find no

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<sup>7</sup> See *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

<sup>8</sup> *Griffin v. Illinois*, 351 U.S. 12, 19 (1956).

<sup>9</sup> *United States v. MacCollum*, 426 U.S. 317, 325-26 (1976).

abuse of discretion in the Superior Court's denial of Johnson's motion for transcript at State expense.

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

BY THE COURT:

/s/Henry duPont Ridgely  
Justice