

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SYLVESTER MILLER,	§
	§ No. 595, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0408012099
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 22, 2008

Decided: March 7, 2008

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 7<sup>th</sup> day of March 2008, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a),<sup>1</sup> it appears to the Court that:

(1) The defendant-appellant, Sylvester Miller, filed an appeal from the Superior Court's October 29, 2007 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

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<sup>1</sup> With the permission of the Court, the appellant also filed a supplemental opening brief and appendix, which we have considered for purposes of this Order.

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) In March 2005, Miller was found guilty by a Superior Court jury of six counts of Rape in the First Degree and one count of Continuous Sexual Abuse of a Child. He was sentenced to a mandatory term of 15 years at Level V on each rape conviction and to 5 years at Level V, to be suspended after 2 years for decreasing levels of supervision, on the sexual abuse conviction. Miller's convictions and sentences were affirmed by this Court on direct appeal.<sup>2</sup>

(3) In this appeal, Miller claims that the Superior Court abused its discretion by denying his motion for postconviction relief, which demonstrated numerous errors of law and constitutional violations, including a defective indictment, a violation of his Miranda rights, prosecutorial misconduct, a double jeopardy violation, and judicial interference with the jury's deliberations. Miller also claims that his trial counsel provided ineffective assistance, specifically by failing to assert various claims on direct appeal. Finally, Miller claims that the Superior Court abused its discretion by failing to provide him with transcripts at State expense.

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<sup>2</sup> *Miller v. State*, 893 A.2d 937 (Del. 2006).

(4) In his direct appeal, Miller asserted eight claims of judicial error and abuse of discretion, none of which he asserts in this postconviction proceeding. Under Rule 61, any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is procedurally barred unless the defendant demonstrates a) cause for relief from the procedural default; and b) prejudice from a violation of his rights.<sup>3</sup> The procedural bar also does not apply to a claim that the Superior Court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.<sup>4</sup>

(5) We have carefully reviewed Miller's briefs and find that he has failed to demonstrate either cause for the procedural default or prejudice from a violation of his rights. Nor has he demonstrated either a lack of jurisdiction on the part of the Superior Court or a miscarriage of justice as the result of a constitutional violation. As such, we conclude that Miller's claims of legal error and constitutional violations are procedurally defaulted.

(6) In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel's representation fell

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<sup>3</sup> Super. Ct. Crim. R. 61(i) (3) (A) and (B).

<sup>4</sup> Super. Ct. Crim. R. 61(i) (5).

below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.<sup>5</sup> Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."<sup>6</sup> The defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.<sup>7</sup>

(7) We have carefully reviewed Miller's briefs, as well as the submissions of Miller and his counsel filed in the Superior Court, and find that Miller has failed to demonstrate that any alleged error on the part of his counsel resulted in prejudice to him. As such, we conclude that Miller's claims of ineffective assistance of counsel are also unavailing.

(8) Miller's final claim is that the Superior Court abused its discretion by failing to provide him with transcripts at State expense. Although an indigent defendant is entitled to transcripts at State expense to pursue a direct appeal, there is no such right with respect to a postconviction

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<sup>5</sup> *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>6</sup> *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

<sup>7</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

motion.<sup>8</sup> Absent a showing of just cause, it was within the Superior Court's discretion to deny Miller's request for transcripts at State expense.

(9) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>8</sup> *United States v. MacCollum*, 426 U.S. 317, 325-26 (1976).