

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL SHAW,	§	
	§	No. 523, 2007
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0509015887
Appellee.	§	

Submitted: February 8, 2008

Decided: May 6, 2008

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

**ORDER**

This 6<sup>th</sup> day of May 2008, upon consideration of the briefs on appeal and the trial court record, it appears to the Court that:

(1) The defendant, Daniel Shaw, filed an appeal from the Superior Court’s September 18, 2007 denial of his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”).<sup>1</sup> We find no merit to the appeal. Accordingly, we affirm the Superior Court’s judgment.

(2) In June 2006, a Superior Court jury found Shaw guilty of Trafficking in Cocaine, Use of a Vehicle for Keeping Controlled Substances, Possession of Drug Paraphernalia, Driving Under the Influence, and

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<sup>1</sup> *State v. Shaw*, 2007 WL 3105751 (Del. Super. Ct.).

Reckless Driving. Shaw was sentenced to a total of twelve years and four months at Level V suspended after five years for decreasing levels of supervision. This Court affirmed Shaw's convictions and sentence on direct appeal.<sup>2</sup>

(3) In his opening brief, Shaw claims as he did in his postconviction motion that his *Miranda* rights were violated, his confrontation rights were violated, and that he was denied the opportunity to challenge an illegal search. Shaw also alleges that the trial testimony was conflicting and that his trial counsel was ineffective.

(4) When reviewing the Superior Court's denial of postconviction motion, the Court first must consider the procedural requirements of Rule 61 before addressing any substantive issues.<sup>3</sup> Rule 61(i)(3) provides that any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is barred, unless the petitioner can establish cause for the procedural default and prejudice from a violation of the petitioner's rights.<sup>4</sup>

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<sup>2</sup> *Shaw v. State*, 2007 WL 866196 (Del. Supr.).

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

<sup>4</sup> Del. Super. Ct. Crim. R. 61(i)(3). The procedural bar of Rule 61(i)(3) is inapplicable, however, if there is a claim that the trial court lacked jurisdiction or there is a colorable claim that there was a miscarriage of justice because of a constitutional violation. Del. Super. Ct. Crim. R. 61(i)(5).

(5) Shaw did not raise any of his postconviction claims on direct appeal.<sup>5</sup> As a result, with the exception of the ineffective counsel claim, the claims are procedurally barred pursuant to Rule 61(i)(3) unless Shaw can demonstrate cause for his failure to raise the claims on direct appeal and prejudice from the alleged violation of his rights.<sup>6</sup> To prevail on his claim of ineffective assistance of counsel, Shaw must establish that his attorney's representation fell below an objective standard of reasonableness, and that but for his counsel's errors, the outcome of the trial would have been different.<sup>7</sup>

(6) The Court has carefully considered the parties' positions on appeal and the Superior Court record. Shaw does not address why he did not raise his postconviction claims on direct appeal, and he offers only conclusory allegations that error on the part of his counsel affected the outcome of his trial.<sup>8</sup> For these reasons, we affirm the denial of Shaw's

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<sup>5</sup> On direct appeal, Shaw argued without success that there was insufficient evidence from which a rational juror could conclude beyond a reasonable doubt that he was under the influence of alcohol or drugs.

<sup>6</sup> Generally, the Court will not hear claims of ineffective assistance of counsel for the first time on direct appeal. *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

<sup>7</sup> *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>8</sup> See *Younger v. State*, 580 A.2d at 556 (holding that a defendant must make concrete allegations of ineffective assistance and substantiate them or risk summary dismissal).

postconviction motion, albeit on grounds different from those relied upon by the Superior Court.<sup>9</sup>

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>9</sup> When denying the postconviction motion, the Superior Court considered the merit of Shaw's claims after concluding that none of the Rule 61 procedural bars applied. *See Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (providing that "[t]he Court may affirm on the basis of a different rationale than that which was articulated by the trial court").