

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE E. BUNTING,	§
	§ No. 477, 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. 0303001118
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 25, 2008

Decided: June 6, 2008

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 6th day of June 2008, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Tyrone E. Bunting, filed an appeal from the Superior Court's August 10, 2007 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In April 2003, Bunting was charged with two counts of Robbery in the First Degree and one count of Robbery in the Second Degree. In January 2004, Bunting was found guilty by a Superior Court jury of one count of Robbery in the First Degree and one count of Robbery in the

Second Degree. He was sentenced as a habitual offender to 20 years at Level V on the first degree robbery conviction and to 5 years at Level V, followed by 6 months of Level III probation on the second degree robbery conviction. Bunting's convictions and sentences were affirmed by this Court on direct appeal.¹

(3) In this appeal from the Superior Court's denial of his motion for postconviction relief, Bunting claims that a) the jury was biased because a prosecution witness sat in the courtroom during a portion of jury selection; b) a victim's in-court identification of him was deficient; c) he was improperly denied access to transcripts; and d) he improperly appeared before the jury in prison clothing. The only claim Bunting presented to the Superior Court was his first claim regarding the prosecution witness. As such, we will consider only that claim in this appeal.²

(4) It is undisputed that Bunting did not assert his claim in his direct appeal. He contends, however, that the claim should not have been procedurally defaulted and the Superior Court should have reviewed the claim on its merits.

¹ *Bunting v. State*, Del. Supr., No. 128, 2004, Steele, C.J. (Oct. 5, 2004).

² Supr. Ct. R. 8 ("Only questions fairly presented to the trial court may be presented for review")

(5) We have held that the Superior Court must apply the procedural bars of Rule 61 before considering the merits of any claims for postconviction relief.³ Rule 61(i) (3) provides that any ground for postconviction relief that was not asserted in the proceedings leading to the judgment of conviction is thereafter barred. In order to avoid the consequences of Rule 61(i) (3), the movant must demonstrate cause for relief from the procedural default and prejudice from a violation of his rights.⁴ In the alternative, the movant must demonstrate either that the Superior Court lacked jurisdiction or that there is a colorable claim of a miscarriage of justice.⁵

(6) The record reflects that a prosecution witness entered the courtroom during jury selection and sat there passively until asked to wait outside. However, Bunting has presented no evidence that any potential juror realized that the witness was in the courtroom or that the witness spoke to anyone in the courtroom. As such, Bunting has failed to demonstrate cause for relief from the procedural default and prejudice from a violation of his rights, nor has he demonstrated either a lack of jurisdiction or a

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

⁴ Super. Ct. Crim. R. 61(i) (3) (A) and (B).

⁵ Super. Ct. Crim. R. 61(i) (5).

miscarriage of justice. We conclude, therefore, that the Superior Court properly denied Bunting's claim.⁶

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁶ To the extent Bunting argues that his counsel provided ineffective assistance by failing to object to the presence of the witness in the courtroom, that claim fails in the absence of any evidence of error on the part of his counsel that resulted in prejudice to him. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).