

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTONIO DRUMMOND,	§
	§ No. 297, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0407019483
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 8, 2008

Decided: August 1, 2008

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

ORDER

This 1st day of August 2008, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Antonio Drummond, filed an appeal from the Superior Court's May 30, 2008 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 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 August 2004, Drummond was indicted on charges of Trafficking in Cocaine, Possession with Intent to Deliver Cocaine, and Distribution of Drugs to a Minor. Trial was held in the Superior Court on June 13 and 14, 2005. At the conclusion of the State's case, the Superior Court dismissed the distribution charge. The State filed an amended indictment on June 13, 2005. The jury found Drummond guilty of the remaining two charges. Drummond was sentenced as a habitual offender to 8 years of Level V incarceration on the trafficking conviction and to 5 years at Level V, to be followed by 6 months at Level IV work release, on the possession conviction. Drummond'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 postconviction motion, Drummond claims that his counsel provided ineffective assistance by failing to a) challenge his invalid arrest warrant; b) challenge his denial of a preliminary hearing; c) object to the State's failure to produce a properly signed grand jury indictment; d) object to the insufficiency of the evidence supporting his conviction of possession with intent to deliver cocaine; and e) object to the failure of the State to notify the defense of a change in its expert witness. In the alternative, while conceding

¹ *Drummond v. State*, Del. Supr., No. 81, 2006, Jacobs, J. (Oct. 5, 2006).

that his substantive claims were not asserted in his direct appeal,² Drummond argues that the procedural bar is inapplicable because his counsel's errors constituted a miscarriage of justice.³

(4) In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel's representation fell 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.⁴ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁵

(5) We have carefully reviewed the arguments presented in Drummond's opening brief. In the absence of any evidence that his counsel committed any professional error that resulted in prejudice to him or resulted in a miscarriage of justice, we conclude that Drummond's claims are without merit.

² Super. Ct. Crim. R. 61(i) (3) (A) and (B) (any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is barred unless the movant demonstrates cause for relief from the procedural default and prejudice from a violation of the movant's rights).

³ Super. Ct. Crim. R. 61(i) (5) (the procedural bar is inapplicable in the case of 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).

⁴ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁵ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

(6) 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's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice