

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FREDDY L. FLONNORY,	§
	§ No. 120, 2008
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. 9707012190
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 11, 2008
Decided: August 26, 2008

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

ORDER

This 26th day of August 2008, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Freddy L. Flonnory, filed an appeal from the Superior Court's February 14, 2008 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 September 1997, Flonnory was indicted, along with co-defendant Korey Twyman, on two counts of Intentional Murder in the First Degree, one count of Attempted Murder in the First Degree, one count of Conspiracy in the First Degree, and several weapon charges. In September

1998, the defendants' cases were severed. Flonnory's case proceeded to trial and he was convicted of all of the charges against him. After a penalty hearing, the Superior Court imposed the death penalty for each of the two murder convictions. On August 14, 2001, this Court reversed Flonnory's convictions.¹

(3) Flonnory was re-tried and again was convicted of the original charges against him.² He was sentenced to life in prison on both murder convictions and on the attempted murder conviction, and to a total of 60 years of Level V incarceration on the remaining convictions. This Court affirmed Flonnory's convictions and sentences on direct appeal.³

(4) In his appeal from the Superior Court's denial of his postconviction motion, Flonnory claims that the Superior Court erred when it a) ruled that he was procedurally barred from asserting claims that were

¹ *Flonnory v. State*, 778 A.2d 1044 (Del. 2001).

² One of the weapon charges had been severed.

³ *Flonnory v. State*, 893 A.2d 507 (Del. 2006).

previously decided in his direct appeal;⁴ and b) ruled that his claims of ineffective assistance of trial and appellate counsel were without merit.⁵

(5) When reviewing a postconviction motion pursuant to Rule 61, the Superior Court must first consider the procedural requirements of the Rule before addressing any substantive claims.⁶ The record reflects that Flonnory's claims of error in the Superior Court's evidentiary rulings at trial were previously asserted in his direct appeal. As such, they are procedurally barred as previously adjudicated unless he can demonstrate that reconsideration of the claims is warranted in the interest of justice.⁷ In the absence of any evidence that reconsideration of the claims is warranted, we conclude that the Superior Court properly ruled that they were procedurally barred.

(6) 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

⁴ Specifically, Flonnory claimed that i) the State's proffer of an incorrect transcript of witness Lionel Robinson's statement violated *Brady v. Maryland*, 373 U.S. 83 (1963) and ii) witness Dwayne Warren's testimony from the first trial was improperly introduced into evidence at the second trial.

⁵ Flonnory specifically alleged that his counsel failed to i) argue that the State's case was based on perjured testimony and falsified evidence, ii) move for a mistrial on the ground of conflicting statements by the State's ballistics expert, and iii) argue on appeal that the State intentionally introduced false testimony at trial.

⁶ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁷ Super. Ct. Crim. R. 61(i) (4).

unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁸ Although not insurmountable, the Strickland standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”⁹ The defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.¹⁰ In the absence of any evidence that any action on the part of his counsel resulted in prejudice to him, we conclude that Flonnory’s claim of ineffective assistance is without merit and that there was no error or abuse of discretion on the part of the Superior Court in denying it.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁸ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁹ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

¹⁰ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).