

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SALIH, a.k.a. CECIL L. HALL,	§
	§
Defendant Below-	§ No. 178, 2008
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0506014139
Plaintiff Below-	§
Appellee.	§

Submitted: August 8, 2008  
Decided: October 31, 2008

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 31<sup>st</sup> day of October 2008, after careful consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Salih (also known as Cecil L. Hall ),<sup>1</sup> filed this appeal from the Superior Court's denial of his first motion for postconviction relief. Salih contends on appeal that the Superior Court abused its discretion in denying his claims of ineffective assistance of counsel and in finding that his other postconviction claims were procedurally barred. We find no merit to Salih's appeal. Accordingly, we affirm the Superior Court's judgment.

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<sup>1</sup> Hall contends that his name was legally changed to "Salih" in 1997.

(2) The record reflects that Salih pled guilty in August 2006 to two counts of third degree burglary. In exchange for his guilty plea, the State dismissed other criminal charges, including felony theft. On December 1, 2006, the Superior Court declared Salih to be a habitual offender and sentenced him to a total period of twelve years at Level V incarceration, to be suspended after serving ten years for decreasing levels of supervision. This Court affirmed Salih's conviction and sentence on direct appeal.<sup>2</sup> In February 2007, Salih filed a motion for postconviction relief, which the Superior Court denied. This appeal followed.

(3) Salih raises two issues in his opening brief on appeal. First, he contends that the Superior Court abused its discretion in denying his claims for ineffective assistance of counsel. Second, he contends that the Superior Court erred in finding that his constitutional challenge to the habitual offender statute was procedurally barred.

(4) We review the Superior Court's denial of postconviction relief for abuse of discretion.<sup>3</sup> To prevail on a claim of ineffective assistance of counsel in the case of a guilty plea, a defendant must establish that (i) his counsel's representation fell below an objective standard of reasonableness; and (ii) but for counsel's unprofessional errors, the defendant would not have pled guilty but

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<sup>2</sup> *Hall v. State*, 2007 WL 3170467 (Del. Oct. 30, 2007).

<sup>3</sup> *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

would have insisted on going to trial.<sup>4</sup> The defendant must set forth and substantiate concrete allegations of actual prejudice.<sup>5</sup> Moreover, there is a “strong presumption” that counsel’s representation was professionally reasonable.<sup>6</sup>

(5) In his opening brief, Salih contends that he has six specific grounds of ineffective assistance of counsel. The substance of Salih’s brief, however, only argues that counsel was ineffective because he failed to investigate the defense of involuntary intoxication. Relative to that argument, Salih also contends that the Public Defender’s office was operating under substandard staffing conditions in violation of American Bar Association standards, which led to a constructive denial of Salih’s right to counsel. To the extent that Salih raised other ineffectiveness grounds in the Superior Court, he has waived those arguments by failing to brief them in this appeal.<sup>7</sup>

(6) The Superior Court analyzed the merits of Salih’s claim that counsel was ineffective for failing to investigate an involuntary intoxication defense and concluded that the claim was unsupported by the record. The trial court noted that defense counsel, prior to the entry of Salih’s guilty plea, reviewed a report provided Dr. Stephen Mechanick, which concluded that, even if Salih was under

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<sup>4</sup> *Hill v. Lockhart*, 474 U.S. 52, 59 (1984); *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

<sup>5</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

<sup>6</sup> *Strickland v. Washington*, 466 U.S. at 689.

<sup>7</sup> *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

the influence of medication at the time he committed the charged offenses, there was no evidence that Salih was unable to form the intent to commit the crimes. Counsel discussed the implications of the report with Salih, and ultimately concluded that the evidence did not support an involuntary intoxication defense. In light of this record, there is no support for Salih's claim that defense counsel failed to investigate an involuntary intoxication defense. Moreover, when he entered his plea, Salih stated under oath that he was satisfied with his counsel's representation. Salih is bound by his sworn representations.<sup>8</sup> Thus, Salih can establish neither cause nor prejudice. Accordingly, the Superior Court did not abuse its discretion in denying this ineffectiveness claim or Salih's claim that he was constructively denied counsel because the Public Defender's office was understaffed.

(7) Salih's second argument on appeal is that the Superior Court erred in concluding that Salih's challenge to the constitutionality of the habitual offender statute was procedurally barred because Salih had failed to raise the issue on direct appeal. Although the Superior Court incorrectly concluded that Salih did not raise this challenge on direct appeal, we nonetheless affirm the Superior Court's finding that the claim is procedurally barred because Superior Court Criminal Rule 61(i)(4) bars any postconviction ground for relief that was previously adjudicated. Salih raised his constitutional claim on direct appeal and, notwithstanding his contention

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<sup>8</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

to the contrary, this Court specifically rejected any claim that Salih's habitual offender sentence was unconstitutional.<sup>9</sup> Salih could not avoid the procedural bar of Rule 61(i)(4) by refining or restating this claim.<sup>10</sup>

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

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>9</sup> *Hall v. State*, 2007 WL 3170467, \*2 (Oct. 30, 2007).

<sup>10</sup> *Skinner v. State*, 607 A.2d 1170, 1172 (Del. 1992).