

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARKIEVIS J. JOHNSON,	§
	§ No. 253, 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. 0509025689
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 19, 2008

Decided: November 5, 2008

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

ORDER

This 5th day of November 2008, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Markievis J. Johnson, filed an appeal from the Superior Court's April 21, 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 May 2006, Johnson was found guilty by a Superior Court jury of Rape in the Second Degree. He was sentenced to 15 years

incarceration at Level V, to be followed by a period of probation. Johnson's conviction and sentence were affirmed by this Court on direct appeal.¹

(3) In this appeal, Johnson claims that a) a sample of his blood, which was taken by police and matched to a used condom found at the scene of the rape, should have been suppressed because it was obtained without a warrant; b) the prosecution's delay in producing the DNA test results constituted a *Brady* violation; c) the DNA evidence presented by the State at trial was unreliable; and d) his counsel provided ineffective assistance.

(4) Johnson's first claim is that his blood sample was illegally obtained without a warrant. The record in this case reflects that the police applied for a warrant to collect two vials of blood from Johnson on September 28, 2005. The record further reflects that a warrant was issued on September 29, 2008 and that, on the same date, two vials of blood were collected from Johnson's left arm. The DNA sample from Johnson's blood matched the DNA found on the used condom found at the scene of the rape. Because the record reflects that a warrant was issued for a sample of Johnson's blood, there is no factual support for Johnson's first claim. As such, we conclude that the claim is without merit.

¹ *Johnson v. State*, Del. Supr., No. 576, 2006, Jacobs, J. (Apr. 25, 2007).

(5) Johnson's second claim is that the prosecution's delay in producing the DNA test results constituted a *Brady* violation.² There are three components of a *Brady* violation: a) evidence exists that is favorable to the accused because it is either exculpatory or impeaching; b) the evidence is suppressed by the State; and c) the suppression of the evidence prejudices the defendant.³ Once again, the record does not support Johnson's claim. First, the results of the DNA testing were not favorable to Johnson. Second, the record reflects that the Medical Examiner completed the DNA analysis on April 5, 2006. Third, on April 10, 2006, a copy of the report was provided by the State to the defense, more than a month before trial was to begin. Because there is no factual support for Johnson's claim of a *Brady* violation, we conclude that his second claim also is without merit.

(6) Johnson's third claim is that the DNA evidence presented by the State at trial was unreliable. The record reflects that the State's witnesses were cross-examined by the defense on the issue of the reliability of the DNA analysis conducted on Johnson's blood sample and the condom. Johnson has presented no coherent argument undermining the trial judge's determination that the DNA evidence was sufficiently reliable to be admitted

² *Brady v. Maryland*, 373 U.S. 83 (1963).

³ *Starling v. State*, 882 A.2d 747, 756 (Del. 2005).

and considered by the jury. As such, we conclude that Johnson's third claim is without merit.

(7) Johnson's final claim is that his attorney provided ineffective assistance, specifically, by failing to conduct an adequate pretrial investigation and by failing to file a speedy trial motion. In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that, but for the professional errors of his counsel, the outcome of the proceedings would probably have been different.⁴ Johnson offers no support for his contention that his counsel's "inadequate" pretrial investigation or his failure to present a speedy trial motion in any way prejudiced his case. As such, we conclude that Johnson's final claim also is without merit.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

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