

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE DRUMMOND,	§
	§
Defendant Below-	§ No. 272, 2008
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0606022334
Plaintiff Below-	§
Appellee.	§

Submitted: August 25, 2008
Decided: November 25, 2008

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

ORDER

This 25th day of November 2008, upon consideration of appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Tyrone Drummond, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Drummond's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Drummond was indicted in July 2006 on several drug-related charges. The charges resulted from an undercover drug buy in which a confidential informant and two undercover officers approached

Drummond about buying crack cocaine. Drummond got into the car, and they drove to Drummond's cousin's house where the transaction was completed. Prior to trial, defense counsel filed a motion to compel the identity of the confidential informant. The Superior Court denied the motion on the ground that the informant's testimony was not material to Drummond's defense because it would be inculpatory.

(3) A Superior Court jury convicted Drummond of possession with intent to deliver cocaine and possession of drug paraphernalia. The State dismissed a charge of conspiracy. The Superior Court sentenced him to a total period of eleven years at Level V incarceration to be suspended after serving four years, and upon successful completion of the Key Program, for decreasing levels of supervision. This Court affirmed on direct appeal.¹ Thereafter, Drummond filed a motion for postconviction relief, alleging ineffective assistance of counsel. The Superior Court denied the motion. This appeal followed.

(4) In his opening brief, Drummond asserts that his trial counsel was ineffective for failing to obtain the identity of, and call as a defense witness, the confidential informant. He also asserts trial counsel was ineffective for failing to call a witness to the drug transaction, as well as the individual who actually sold the drugs to the officer, to testify at trial about Drummond's role in the drug

¹ *Drummond v. State*, 2007 WL 2066788 (Del. July 19, 2007).

purchase and about their own guilty pleas arising from the transaction. Finally, he contends that counsel was ineffective for failing to suppress the drug evidence due to an inadequate chain of custody.

(5) We review the Superior Court’s denial of postconviction relief for abuse of discretion.² To prevail on a claim of ineffective assistance of counsel, 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 outcome of the proceeding would have been different.³ The defendant must set forth and substantiate concrete allegations of actual prejudice.⁴ Moreover, there is a “strong presumption” that counsel’s representation was professionally reasonable.⁵

(6) Drummond’s first allegation of ineffective assistance has no basis in fact because his trial counsel *did* attempt to obtain the identity of the confidential informant. The Superior Court held a *Flowers*⁶ hearing and denied defense counsel’s motion to compel because, as the judge found, the informant would not provide testimony helpful to Drummond’s defense and, instead, would provide

² *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

³ *Hill v. Lockhart*, 474 U.S. 52, 59 (1984); *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

⁴ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

⁵ *Strickland v. Washington*, 466 U.S. at 689.

⁶ *Flowers v. State*, 361 A.2d 564 (Del. Super. 1973).

testimony that would inculcate Drummond. We affirmed that ruling of the Superior Court on Drummond's direct appeal.⁷ Accordingly, Drummond's first allegation of ineffective assistance of counsel has no merit.

(7) Drummond next asserts that counsel was ineffective for failing to call an eyewitness to the alleged drug buy, as well as the person who actually sold the drugs. Drummond suggests that these two individuals would have provided testimony to support his defense that it was the confidential informant, and not Drummond, who actually completed the transaction with the drug dealer. Drummond offers nothing more specific to support his contention that these two witnesses would have provided testimony to exculpate him. Moreover, the police report contradicts Drummond's contention because it reflects that the eyewitness to the transaction provided a description of someone who fit Drummond's description as the person who made the purchase from the dealer. Under the circumstances, we find no merit to Drummond's conclusory allegation that he was prejudiced by defense counsel's failure to call these two witnesses to testify.

(8) Finally, Drummond contends that his counsel was ineffective for failing to move to suppress the drug evidence on chain of custody grounds. This Court held on appeal, however, that there was no record evidence to support Drummond's conclusory assertion that there had been a break in the chain of

⁷ *Drummond v. State*, 2007 WL 2066788, *3 (Del. July 19, 2007).

custody.⁸ Given that ruling, Drummond cannot establish any error on defense counsel's part.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁸ *Id.*