

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRONE NORWOOD,	§	
	§	No. 170, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for New Castle County
	§	Cr. ID No. 0405006248
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 19, 2013
Decided: October 10, 2013

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

ORDER

This 10th day of October 2013, upon consideration of the parties’ briefs and the Superior Court record, it appears to the Court that:

(1) The appellant, Tyrone Norwood (“Norwood”), appeals from the Superior Court’s March 13, 2013 denial of his first motion for postconviction relief under Superior Court Criminal Rule 61 (“Rule 61”). We conclude there is no merit to the appeal and affirm the Superior Court’s judgment.

(2) It appears from the record that Norwood was charged with Murder in the First Degree for the May 8, 2004 fatal shooting of seventeen-year old Diane Hechter at a party in Newark, Delaware. On September 8, 2005, Norwood pled

guilty to Murder in the Second Degree, as a lesser-included offense of Murder in the First Degree, and to two weapon offenses.

(3) On November 16, 2005, after a presentence investigation, Norwood was sentenced to a total of forty-nine years at Level V, suspended after thirty-seven years for decreasing levels of supervision. On direct appeal, Norwood raised issues concerning his sentence. Upon review of the record, we affirmed the Superior Court's judgment pursuant to Supreme Court Rule 26(c).¹

(4) On April 9, 2012, Norwood moved for postconviction relief, alleging that his 2005 guilty plea was invalid because of prosecutorial misconduct and ineffective assistance of counsel. Norwood claimed that the State failed to disclose exculpatory evidence that supported the defense's theory that the shooting was accidental. Alleging ineffective assistance of counsel, Norwood claimed that his defense counsel failed to inform him of the exculpatory evidence and to investigate the trajectory of the bullet.

(5) Norwood's motion was referred to a Superior Court Commissioner for a report and recommendation. At the Commissioner's direction, the State filed a response to the motion, and defense counsel filed an affidavit in support of the claims of ineffective assistance of counsel.

¹ *Norwood v. State*, 2006 WL 2190585 (Del. Aug. 1, 2006) (Berger, J.).

(6) By report dated December 31, 2012, the Commissioner recommended that Norwood's postconviction motion should be denied because the claims were procedurally barred under Rule 61(i)(3) and/or were without merit, and because the motion was untimely under Rule 61(i)(1). After considering Norwood's objections to the report, the Superior Court, upon *de novo* review, adopted the report and denied Norwood's motion for postconviction relief. This appeal followed.

(7) When reviewing the Superior Court's denial of postconviction relief this Court must consider the procedural requirements of Rule 61 before addressing any substantive issues.² Rule 61(i)(1) bars a motion for postconviction relief that is not filed within one year of a final judgment of conviction.³ Rule 61(i)(3) bars consideration of any claim that could have been raised at trial or on direct appeal.⁴ As to both Rule 61(i)(1) and (3), Rule 61(i)(5) provides that the bars shall not apply "to a colorable claim that there was 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."⁵

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

³ DEL. SUPER. CT. CRIM. R. 61(i)(1).

⁴ DEL. SUPER. CT. CRIM. R. 61(i)(3).

⁵ DEL. SUPER. CT. CRIM. R. 61(i)(5).

(8) In his opening brief on appeal, Norwood argues only that his defense counsel failed to inform him of the existence of certain videotaped witness statements, the substance of which favored the defense’s theory that the shooting was accidental.⁶ According to Norwood, defense counsel’s failure to advise him of the videotapes deprived him of information that was necessary to make an informed decision about whether to plead guilty to second degree murder.

(9) A claim of ineffective assistance of counsel is governed by *Strickland v. Washington*, which requires that a movant show that counsel’s representation fell below an objective standard of reasonableness and was prejudicial.⁷ As we recently noted in *Burns v. State*, the *Strickland* test “applies to Counsel’s actions during plea negotiations as well as during the trial proceedings.”⁸ In this case, defense counsel’s sworn affidavit filed in response to Norwood’s allegations of

⁶ Norwood’s other claims are deemed waived and will not be addressed by the Court. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). (“The failure to raise a legal issue in the . . . opening brief generally constitutes a waiver of that claim on appeal.”).

⁷ *Strickland v. Washington*, 466 U.S. 668, 687-88, 692 (1984).

⁸ *Burns v. State*, 2013 WL 5371956 (Del. Sept. 25, 2013) (Ridgely, J.) (citing *Lafler v. Cooper*, 132 S. Ct. 1376, 1384, 182 L. Ed. 2d 398 (2012)). In *Burns* (and *Lafler*), the defendant had rejected a plea offer and was later convicted at trial. In *Lafler* the Court explained that to succeed on a *Strickland* claim, a defendant must show that “but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court,” and that the conviction and/or sentence under the plea offer “would have been less severe than [those] that in fact were imposed.” *Lafler*, 132 S. Ct. at 1385. Where, as in Norwood’s case, the defendant has accepted a plea offer, the inquiry is whether “there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203 (1985).

ineffectiveness stated that all of the discovery, including the videotaped witness statements, was disclosed to and discussed with Norwood, as was the likelihood of success of an accidental shooting defense.

(10) Having considered the Rule 61(i) procedural bars, we determine, as did the Superior Court, that Norwood's postconviction motion and the claims raised in it are untimely under Rule 61(i)(1) and procedurally barred under Rule 61(i)(3) without exception. Although Norwood admits that he has been aware of the videotaped witness statements since at least 2005, he offers no reason why he did not previously raise the claims. Furthermore, there is no evidence in the record before us that Norwood's guilty plea was involuntary due to ineffective assistance of counsel. To the contrary, the record reflects that the judge engaged in an extensive colloquy with Norwood before the entry of his plea, and confirmed that Norwood had discussed the plea with his counsel and was satisfied with his counsel's representation.⁹

(11) Having carefully considered the parties' briefs and the record, we can discern no basis for overruling the Superior Court's conclusion that Norwood had "failed[ed] to present any factual or legal basis to support his claim of ineffective assistance of counsel." Accordingly, we conclude that the Superior Court properly denied Norwood's postconviction motion.

⁹ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice