

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARK KIRK,

Defendant Below-
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-
Appellee.

'
'
' No. 271, 2000
'
'
' Court BelowCSuperior Court
' of the State of Delaware,
' in and for New Castle County
' Cr.A. Nos. IN96-12-0754-55
' IN96-12-0556
' IN97-01-1773-76

Submitted: September 5, 2000

Decided: October 16, 2000

Before **WALSH, BERGER** and **STEELE**, Justices

O R D E R

This 16th day of October 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Mark Kirk, filed an appeal from an order of the Superior Court 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 this appeal, Kirk claims that: i) his due process rights were violated by the admission of falsified evidence at trial; ii) his videotaped statement to the police should have been suppressed; and iii) he was provided ineffective assistance of counsel in that counsel failed to: raise the appropriate

issues at the suppression hearing, object to falsified evidence being presented at trial, request appropriate expert testing and seek recusal of the trial judge.

(3) In 1997, following a Superior Court bench trial, Kirk was found guilty of 3 counts of felony murder in the first degree, 1 count of arson in the first degree, 2 counts of assault in the first degree and 1 count of assault in the third degree. The State presented evidence that Kirk intentionally started a fire at Beaverbrook Apartments, New Castle County, Delaware, by turning a burner on an electric stove to high and pouring Captain Morgan's Spiced Rum over it. Three people died as a result of the fire and several others were injured trying to escape. Kirk was sentenced to 3 mandatory terms of life imprisonment, plus 23 years. Kirk's convictions and sentences were affirmed on direct appeal.¹

¹***Kirk v. State*, Del. Supr., No. 532, 1997, Berger, J., 1999 WL 415802 (Apr. 29, 1999) (en banc) (ORDER).**

(4) When reviewing a motion under Rule 61, this Court must first determine that the motion satisfies the procedural requirements of the rule before addressing any substantive issues.² Kirk's claim that his due process rights were violated by the admission at trial of falsified evidence concerning the inflammability of Captain Morgan's Spiced Rum and his claim that his videotaped statement to police should have been suppressed were both raised and resolved against Kirk on direct appeal and, therefore, are barred as formerly adjudicated.³ Moreover, there is nothing in the record indicating that reconsideration of these claims is warranted in the interest of justice.⁴

(5) In order to prevail on his claim of ineffective assistance of counsel, Kirk must show that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been

²***Bailey v. State, Del. Supr., 588 A.2d 1121, 1127 (1991).***

³**Super. Ct. Crim. R. 61(i) (4).**

⁴**Id.**

different.⁵ Although not insurmountable, the Strickland standard is highly demanding and leads to a strong presumption that the representation was professionally reasonable.⁶

(6) The record in this case does not support Kirk's claims that his counsel was ineffective by failing to raise the appropriate issues at the suppression hearing, object to falsified evidence at trial, request appropriate expert testing and seek recusal of the trial judge. Moreover, Kirk has failed to demonstrate how he was prejudiced by any of counsel's alleged errors. In the absence of any such evidence, Kirk's claim of ineffective assistance of counsel is unavailing.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

⁵*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁶*Flamer v. State*, Del. Supr., 585 A.2d 736, 753 (1990).