

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES A. BIGGINS,	§
	§
Defendant Below-	§ No. 118, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. Nos. S97-01-0376I
Plaintiff Below-	§ S97-01-0377I
Appellee.	§ S97-01-0378I
	§ S97-01-0381I
	§ S97-01-0382I

Submitted: July 14, 2000

Decided: September 26, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices

**ORDER**

This 26<sup>th</sup> day of September 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, James A. Biggins, filed this appeal from the February 25, 2000 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, Biggins claims that his convictions should be vacated due to numerous constitutional and statutory violations. Specifically, Biggins claims: the State violated the interstate agreement on detainers and extradition

because it did not request his extradition from Maryland in a timely manner; his right to a speedy trial was violated; he was charged illegally by information rather than grand jury indictment; there was an abuse of judicial discretion in instructing the jury on lesser included criminal charges different from those in the indictment, resulting in an enhanced penalty and unfair surprise and prejudice to the defense; he was charged illegally under the indictment because it was drafted in a confusing manner; the State engaged in various acts of prosecutorial misconduct, including charging him by information rather than indictment, allowing its chief witness to commit perjury, presenting testimony that was not credible, and delivering an unethical closing argument; there was unspecified judicial misconduct resulting in unfair prejudice to him; the search warrant was executed illegally; the waiver of indictment was forged and, therefore, invalid; the State's witnesses committed perjury; the State's case was based on unreliable DNA evidence and FBI testimony; the jury selection process was unconstitutional; and, finally, he was afforded ineffective assistance of counsel at trial and on appeal.<sup>1</sup>

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<sup>1</sup>Biggins' claim of ineffective assistance of trial counsel consists of numerous allegations that may fairly be summarized as failure to: file the proper pretrial motions, file the proper discovery, diligently investigate the facts, obtain the appropriate expert evidence for trial and assert the appropriate objections at trial. Biggins' claim of ineffective assistance of appellate counsel is based on counsel's decision not to raise any issues on appeal apart from the claim that the State's closing argument was improper.

(3) On August 28, 1997, Biggins was found guilty by a Superior Court jury of 3 counts of unlawful sexual intercourse in the second degree, 1 count of assault in the third degree and 1 count of unlawful imprisonment in the second degree. He was acquitted of 2 counts of possession of a deadly weapon during the commission of a felony. Biggins was sentenced to a total of 30 years at Level V, with credit for time served, followed by decreasing levels of supervision. Biggins' convictions and sentences were affirmed by this Court on direct appeal.<sup>2</sup>

(4) When reviewing the Superior Court's denial of a postconviction motion pursuant to Rule 61, this Court must first consider the procedural requirements of the Rule before addressing any substantive issues.<sup>3</sup> Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is thereafter barred unless the defendant shows cause for relief from the procedural default and prejudice from violation of his rights.<sup>4</sup> The procedural bar does not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability,

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<sup>2</sup>*Biggins v. State*, Del. Supr., No. 468, 1997, Walsh, J., 1999 WL 1192332 (Nov. 24, 1999) (ORDER).

<sup>3</sup>*Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990).

<sup>4</sup>Super. Ct. Crim. R. 61(i) (3).

integrity or fairness of the proceedings leading to the judgment of conviction.<sup>5</sup>

Likewise, any ground for relief that was formerly adjudicated is procedurally barred unless reconsideration of the claim is warranted in the interest of justice.<sup>6</sup>

(5) We have carefully reviewed the record in this case and conclude that each and every one of Biggins' claims, with the exception of his claim of ineffective assistance of counsel, is procedurally barred, either because it was not previously asserted in the proceedings leading to the judgment of conviction or because it was formerly adjudicated.<sup>7</sup> Moreover, the record does not reflect any circumstances that would excuse Biggins' failure to raise those claims not previously raised in the proceedings leading to the judgment of conviction,<sup>8</sup> or warrant reconsideration of those claims that were formerly adjudicated in the interest of justice.<sup>9</sup>

(6) In order to prevail on his claim of ineffective assistance of counsel, Biggins 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

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<sup>5</sup>Super. Ct. Crim. R. 61(i) (5).

<sup>6</sup>Super. Ct. Crim. R. 61(i) (4).

<sup>7</sup>Super. Ct. Crim. R. 61(i) (3) and (4).

<sup>8</sup>Super. Ct. Crim. R. 61(i) (5).

<sup>9</sup>Super. Ct. Crim. R. 61 (i) (4).

been different.<sup>10</sup> Although not insurmountable, the Strickland standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”<sup>11</sup>

(7) Biggins’ claim of ineffective assistance of counsel both at trial and on appeal is without merit. Biggins has failed to demonstrate how he was prejudiced by any of trial counsel’s alleged errors. Moreover, he has failed to demonstrate that appellate counsel’s decision to raise only the issue of the State’s closing argument on appeal was professionally unreasonable.

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

BY THE COURT:

/s/ E. Norman Veasey  
Chief Justice

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<sup>10</sup>*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>11</sup>*Flamer v. State*, Del. Supr., 585 A.2d 736, 753 (1990).