

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT PURYEAR	§
	§
Defendant Below,	§
Appellant,	§ No. 439, 1999
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware in and
STATE OF DELAWARE,	§ for Kent County
	§ Cr.A. Nos. IK98-12-0012 and
Plaintiff Below,	§ 0013
Appellee.	§

Submitted: May 23, 2000

Decided: May 30, 2000

Before WALSH, HOLLAND, and BERGER, Justices.

O R D E R

This 30th day of May 2000, upon consideration of the briefs of the parties it appears to the Court as follows:

(1) Robert M. Puryear (“Puryear”) was convicted in the Superior Court on two charges of delivery of cocaine. In this appeal, he asserts three claims of error: (i) interference with the right to counsel; (ii) admission of prejudicial evidence; and (iii) failure of the jury to be instructed on a defendant’s right not to testify at trial. We find no merit to any of these claims and, accordingly, affirm.

(2) Puryear’s claim of the prosecutorial interference with the right to counsel arises from the fact that while appearing *pro se* in a traffic charge in

another court, Puryear was approached by police officers and asked to provide information concerning charges pending against the attorney Puryear had retained to represent him in the Superior Court drug charges. This was done with the consent of the prosecuting attorney. Although Puryear declined cooperation, his attorney was subsequently arrested and indicted on drug charges. Prior to the Superior Court trial, this Court suspended Puryear's attorney from the practice of law.

(3) Puryear claims that the State's conduct in authorizing police contact interfered with the attorney-client relationship and, as a matter of law, required dismissal of the charges against him in the Superior Court. While the conduct of the State of permitting contact by police officers with a represented defendant cannot be condoned, Puryear is unable to demonstrate that such action by the State prejudiced his trial rights in the Superior Court. (4) Puryear was not represented by his counsel of choice because that attorney had been suspended by this Court for disciplinary reasons prior to trial. But Puryear was represented by substitute counsel at trial and makes no complaint about the effectiveness of that attorney. In the absence of demonstrable prejudice, prosecutorial conduct, standing alone, does not require the dismissal of criminal proceedings. See *United States v. Morrison*, 449 U.S. 361, 365 (1981). We do

not condone the conduct of the State in this case. We are satisfied, however, that it did not play any part in Puryear's convictions in the Superior Court.

(5) Puryear's second claim is that the trial court abused its discretion in permitting an informant, who testified for the State, to indicate that the informant had been provided with lodging by the State because of fear for his safety. We are satisfied that the trial court did not abuse its discretion in permitting this testimony in view of the prior opening of that area of inquiry on cross-examination by defense counsel.

(6) Finally, with respect to Puryear's claim that he was denied an instruction concerning his right not to testify at trial, the record is clear that he was afforded an opportunity to correct that omission prior to jury deliberation but declined the giving of a supplemental instruction. Under the circumstances, we find that Puryear has waived the opportunity for a supplemental instruction that would have cured any deficiency in the court's original instruction. Having made that tactical choice, Puryear is bound by it. *See Bromwell v. State*, Del. Supr., 427 A.2d 884, 892 (1981).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and same hereby is,

AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice