

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NATHANIEL ANDERSON,	§
	§
Defendant Below-	§ No. 353, 1999
Appellant,	§
	§
v.	§ Court Below— Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN93-09-0145
Plaintiff Below-	§ IN93-09-1386
Appellee.	§

Submitted: April 6, 2000

Decided: May 8, 2000

Before **HOLLAND, HARTNETT** and **BERGER**, Justices

ORDER

This 8th day of May 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Nathaniel Anderson, filed this 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, Anderson claims that his counsel provided ineffective assistance at trial and on appeal. Specifically, Anderson contends that his counsel failed to: pay appropriate attention to his case; request an evidentiary hearing; engage an expert witness to contest the DNA evidence

presented by the State; challenge the “multiplicity” of the charges against him; file a proper and timely direct appeal; make the appropriate evidentiary objections at trial; properly preserve the issues for an appeal; challenge the charges contained in the indictment; object to the due process violations that took place during the pre-trial proceedings; file an adequate direct appeal; and provide him with copies of the trial and sentencing transcripts in a timely manner, which hampered his ability to file his Superior Court motion for postconviction relief as well as the instant appeal. To the extent Anderson has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court.¹

(3) In July 1994, Anderson was convicted by a jury of two counts of unlawful sexual intercourse in the first degree. He was sentenced to a total of 50 years incarceration at Level V. On direct appeal, this Court affirmed the convictions and sentences.² This is Anderson’s second motion for postconviction relief.

¹*Murphy v. State*, Del. Supr., 632 A.2d 1150, 1152 (1993). In his motion for postconviction relief in the Superior Court, Anderson also claimed that the State failed to prove its case beyond a reasonable doubt.

²*Anderson v. State*, Del. Supr., No. 421, 1994, Walsh, J., 1995 WL 330821 (May 26, 1995) (ORDER).

(4) Anderson's claim that his counsel provided ineffective assistance is unavailing. When reviewing the Superior Court's denial of postconviction relief under Rule 61, this Court first must consider the procedural requirements of the rule before addressing any substantive issues.³ Rule 61(i) provides, in part, that no motion for postconviction relief may be filed more than three years after a conviction has become final, unless there is a claim that the lower court lacked jurisdiction or a colorable claim of a miscarriage of justice because of a constitutional violation.⁴

(5) In this case, Anderson's conviction became final on June 14, 1995, the date this Court issued its mandate upon Anderson's direct appeal of his convictions and sentences.⁵ Anderson's second motion for postconviction relief was filed on December 10, 1998, more than three years after his conviction became final. Because the record is devoid of any evidence indicating that the Superior Court lacked jurisdiction or that there was a miscarriage of justice because of a constitutional violation, Anderson's motion is time-barred.

(6) Moreover, Anderson failed to raise his claim in his first motion for postconviction relief. As such, the claim is procedurally barred as repetitive

³*Maxion v. State*, Del. Supr., 686 A.2d 148, 150 (1996).

⁴Super. Ct. Crim. R. 61(i) (1) and (5).

⁵*Jackson v. State*, Del. Supr., 654 A.2d 829, 833 (1995).

unless Anderson can show that consideration of the claim is warranted in the interest of justice.⁶ Anderson has made no such showing.

(7) Even if considered on its merits, Anderson's claim fails. In order to prevail on his claim of ineffective assistance of counsel, Anderson 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 different.⁷ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁸ Anderson has provided no evidence that specific actions either taken or not taken by his counsel resulted in prejudice to his case.

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

BY THE COURT:

/s/Maurice A. Hartnett, III

⁶Super. Ct. Crim. R. 61(i) (2).

⁷*Strickland v. Washington*, Del. Supr., 466 U.S. 668, 688, 694 (1984).

⁸*Flamer v. State*, Del. Supr., 585 A.2d 736, 753 (1990).

Justice

