

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH R. MILLER, JR.,	§
	§
Defendant Below-	§ No. 191, 1999
Appellant,	§
	§
v.	§ Court Below— Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. Nos. 95-04-0055
Plaintiff Below-	§ 95-04-0123
Appellee.	§

Submitted: December 23, 1999

Decided: February 8, 2000

Before **VEASEY**, Chief Justice, **HARTNETT** and **BERGER**, Justices

ORDER

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

(1) The defendant-appellant, Joseph R. Miller, Jr. (“Miller”), filed this appeal from an order of the Superior Court denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) Miller asserts the following grounds for the appeal: 1) the Superior Court erred in denying his requests for a new attorney; and 2) his counsel provided ineffective assistance both at trial and on appeal. To the

extent Miller 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 August 1996, a jury found Miller guilty of murder in the second degree and conspiracy in the second degree. On the murder conviction, Miller was sentenced to 20 years in prison at Level V, with credit for time served, to be suspended after 14 years for 1 year at Level IV work release, followed by 3 years at Level III. On the conspiracy conviction, he was sentenced to 2 years in prison at Level V. This Court affirmed the convictions on direct appeal.²

(4) Miller's first claim is that the Superior Court erred in denying his requests to replace his counsel. He contends he was prejudiced because his counsel failed to file pre-trial motions to suppress and for a change of venue and had a conflict of interest in that he and his son had played pool with the

¹*Murphy v. State*, Del. Supr., 632 A.2d 1150, 1152 (1993). In the Superior Court Miller also claimed that his counsel was ineffective in not being prepared for trial, in failing to interview and subpoena certain witnesses and in failing to seek funds to obtain a forensic expert.

²*Miller v. State*, Del. Supr., No. 424, 1996, Hartnett, J., 1997 WL 398952 (July 1, 1997) (ORDER). On appeal, Miller's counsel filed a no-merit brief pursuant to Supreme Court Rule 26(c). Miller did not supplement the brief with any points he wished this Court to consider.

murder victim. Miller's claim of error is unavailing as he has failed to provide this Court with a sufficient factual basis upon which to review it. The record indicates the Superior Court denied Miller's requests in open court on July 5 and July 17, 1996. It was Miller's burden to provide this Court with "a transcript of all evidence relevant to the challenged finding or conclusion."³ His failure to do so precludes appellate review of his claim.

(5) Miller's second claim is that his counsel was ineffective both at trial and on appeal. Miller alleges he did not testify at trial because his counsel failed to file a motion to suppress evidence of a prior conviction. Had that motion been filed, he contends, he would have testified on his own behalf and "there may never have been a conviction." Miller also alleges he suffered prejudice because his counsel failed to file a motion for a change of venue. Finally, Miller claims his counsel was ineffective because he failed to raise his alleged conflict of interest and various allegedly erroneous trial rulings as issues on appeal.

(6) In order to prevail on his claim of ineffective assistance of counsel, Miller must show that his counsel's representation fell below an

³*Slater v. State*, Del. Supr., 606 A.2d 1334, 1336 (1992) (citing *Tricoche v. State*, Del. Supr., 525 A.2d 151, 154 (1987)); Supr. Ct. R. 9(e)(ii) and 14(e).

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.⁴ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁵

(7) Miller's claim that his counsel was ineffective at trial is unsupported by any evidence in the record. His conclusory contentions regarding his counsel's alleged errors at trial and their alleged impact on the outcome of his case do not satisfy the Strickland standard. Miller's claim that his counsel was ineffective on appeal is equally unavailing. Miller was given the opportunity to supplement his counsel's Rule 26(c) brief and chose not to do so, thereby precluding any claim of ineffective assistance on appeal.⁶ This claim fails even if considered on its merits, since there is no evidence in the record to support it.

⁴*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁵*Flamer v. State*, Del. Supr., 585 A.2d 736, 753 (1990).

⁶*Getz v. State*, Del. Supr., No. 301, 1994, Veasey, C.J., 1994 WL 622022 (Oct. 31, 1994) (ORDER).

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

BY THE COURT:

/s/ Carolyn Berger
Justice