

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONTA E. VICKERS, §
§
Defendant Below, §
Appellant, § No. 431, 1999
§
v. § Court Below: Superior Court
§ of the State of Delaware in and
STATE OF DELAWARE, § for Kent County in Cr. A. No.
§ K97-12-0419I.
Plaintiff Below, §
Appellee. § Def. ID No. 9712002287

Submitted: December 16, 1999
Decided: January 31, 2000

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

O R D E R

This 31st day of January 2000, upon consideration of the appellant's opening brief and appendix and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) Following a two-day jury trial in the Superior Court, the defendant-appellant, Donta E. Vickers ("Vickers"), was convicted of first degree robbery. Vickers was sentenced to eight years at Level V imprisonment, suspended after

five years for one year at a Level IV halfway house, followed by three years at Level III probation. Vickers' conviction was affirmed on appeal.¹

(2) On March 16, 1999, Vickers filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). Vickers filed an amended motion on June 10, 1999. Vickers' motion and his amended motion together raised three claims. First, Vickers claimed that the Superior Court lacked jurisdiction to consider his case. Second, Vickers claimed that his defense counsel was ineffective. Third, Vickers claimed that he was illegally detained by the police prior to being charged. By order dated September 9, 1999, the Superior Court denied Vickers' jurisdictional claim on the merits. The Superior Court summarily dismissed, as conclusory, Vickers' ineffective assistance of counsel claim and claim of illegal detention. This appeal followed.

(3) In his opening brief on appeal², Vickers argues two of the three claims he raised in the Superior Court, namely: ineffective assistance of counsel and lack of jurisdiction. To the extent Vickers has not argued the third claim

¹ *Vickers v. State*, Del. Supr., No. 358, 1998, Walsh, J., 1999 WL 89276 (Jan. 8, 1999) (ORDER).

² Vickers submitted a copy of his amended motion for postconviction relief and requested that the Court consider that document as the appellant's opening brief and appendix.

that was raised in the Superior Court, specifically, the claim of illegal detention, that claim is deemed waived and abandoned and will not be addressed by this Court.³

(4) When reviewing the denial of postconviction relief pursuant to Rule 61, this Court first must consider the procedural requirements of the rule before addressing any substantive issues.⁴ Rule 61(i)(3) bars from consideration any ground for relief that was not raised in the proceedings leading to the conviction unless the petitioner can establish: (1) cause for failing to timely raise the claim, and (2) actual prejudice from failing to raise the claim. Rule 61(i)(5) provides, in part, that the procedural bar in Rule 61(i)(3) shall not apply to a claim of lack of jurisdiction.

(5) Vickers claims that his waiver of indictment was involuntary and that, as a result, the Superior Court lacked jurisdiction to consider his case. The record belies Vickers' assertion that his waiver of indictment was involuntary. The waiver of indictment form filed in the record clearly states that Vickers knowingly waived prosecution by indictment and consented to prosecution by information. The waiver of indictment form has Vickers' original signature on

³ *Murphy v. State*, Del. Supr., 632 A.2d 1150, 1152 (1993).

⁴ *Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990).

it as well as the signature of Vickers' counsel. The State's subsequent filing of an information served to properly establish the Superior Court's jurisdiction over the case against Vickers.⁵ Vickers' jurisdictional claim is without merit.

(6) Vickers claims that his defense counsel was ineffective because she did not: (i) pursue a claim of insufficient evidence; (ii) conduct a sufficient investigation of the facts; (iii) interview or cross-examine witnesses; (iv) call available defense witnesses to testify; (v) object to false statements by the prosecutor; and (vi) request a continuance. To succeed on a claim of ineffective assistance of counsel, Vickers must demonstrate that (i) "counsel's representation fell below an objective standard of reasonableness[.]" and (ii) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."⁶

(7) We agree with the Superior Court that Vickers' allegations of ineffective assistance of counsel are conclusory and warranted summary dismissal of his ineffective assistance of counsel claim. Vickers' conclusory allegations are contradicted and/or denied by his counsel's sworn Rule 61(g)(2) affidavit. Furthermore, Vickers has provided no support for the claim that his

⁵ Super. Ct. Crim. R. 7(b).

⁶ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

counsel's representation fell below an objective standard of reasonableness and that the alleged errors were prejudicial to Vickers' defense.

(8) It is manifest on the face of Vickers' opening brief that the appeal is without merit. The issues raised are clearly controlled by settled Delaware law, and to the extent the issues on appeal implicate the exercise of judicial discretion, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Carolyn Berger
Justice