

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARUS E. YOUNG,	§
	§ No. 289, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr.A. Nos. S01-02-0384 thru
	§ 0386
Plaintiff Below-	§
Appellee.	§

Submitted: August 24, 2005  
Decided: October 18, 2005

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 18<sup>th</sup> day of October 2005, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Darus E. Young, filed an appeal from the Superior Court's June 24, 2005 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Young's opening brief that the appeal is without merit. We agree and affirm.

(2) In 2001, Young was found guilty by a Superior Court jury of Possession With Intent to Deliver Cocaine, Conspiracy in the Second Degree and Possession of Drug Paraphernalia. He was sentenced to 15 years incarceration at Level V, to be followed by decreasing levels of probation. This Court affirmed Young's convictions and sentences on direct appeal.<sup>1</sup>

(3) In this latest appeal, Young claims that the trial judge abused his discretion: a) by denying his claim of ineffective assistance of counsel, in that his counsel refused to allow him to testify at trial; and b) by deciding his postconviction motion without scheduling an evidentiary hearing. To the extent Young has not argued other grounds that previously were raised, those grounds are deemed waived and will not be addressed by this Court.<sup>2</sup>

(4) After the filing of Young's postconviction motion, the Superior Court ordered Young's trial counsel to file an affidavit responding to Young's allegations of ineffective assistance of counsel, including his allegation that he refused to allow Young to testify at trial.<sup>3</sup> Although not requested by the Superior Court, Young filed a response to his counsel's affidavit. The Superior Court judge reviewed all of these materials and

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<sup>1</sup> *Young v. State*, Del. Supr., No. 60, 2002, Walsh, J. (Nov. 19, 2002).

<sup>2</sup> *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his motion for postconviction relief filed in the Superior Court, Young also claimed that his counsel provided ineffective assistance by: failing to consult with him about the appeal; failing to move for judgment of acquittal; failing to object to inadmissible evidence; and failing to object to prosecutorial misconduct.

<sup>3</sup> Super. Ct. Crim. R. 61(g) (1) and (2).

determined, as a matter of discretion, that an evidentiary hearing was not necessary and that Young's claim that his counsel had refused to allow him to testify at trial was without merit.<sup>4</sup>

(5) To prevail on a claim of ineffective assistance of counsel, a defendant 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.<sup>5</sup> Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."<sup>6</sup> A defendant asserting a claim of ineffective assistance is required to make concrete allegations of cause and actual prejudice or risk summary dismissal.<sup>7</sup>

(6) While Young claims that he was convicted because his attorney prevented him from testifying at trial, he does not state specifically what his testimony would have been or how that testimony would have changed the outcome of the case, which is essential to his claim of ineffective assistance

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

<sup>5</sup> *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>6</sup> *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

<sup>7</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

of counsel. In the absence of such a showing, we find no error or abuse of discretion by the Superior Court in denying Young's postconviction motion.

(7) It is within the discretion of the Superior Court to determine whether an evidentiary hearing is necessary to decide a postconviction motion. The record in this case reflects no error or abuse of discretion by the Superior Court in deciding Young's postconviction motion without such a hearing.

(8) It is manifest on the face of Young's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice