

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TIMOTHY O. ANDERSON,	§
	§ No. 165, 2005
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0205008166
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 9, 2005  
Decided: November 22, 2005

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

**ORDER**

This 22<sup>nd</sup> day of November 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Timothy O. Anderson, filed an appeal from the Superior Court's March 30, 2005 (corrected April 7, 2005) order 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 March 2003, Anderson was found guilty by a Superior Court jury of Possession With Intent to Deliver Cocaine, Possession of Marijuana, Maintaining a Dwelling for the Keeping of Controlled Substances, Tampering with Physical Evidence, Conspiracy in the Second Degree,

Possession of Drug Paraphernalia, and three counts of Endangering the Welfare of a Child. He was sentenced to a total of 20 years incarceration at Level V, to be suspended after 5 years of minimum-mandatory time for decreasing levels of probation. Anderson's convictions and sentences were affirmed by this Court on direct appeal.<sup>1</sup>

(3) In this appeal, Anderson claims that: a) his counsel provided ineffective assistance by failing to request a suppression hearing, consult with him about trial strategy, present evidence of his drug addiction, properly cross examine the witnesses, properly present the evidence, move for a mistrial, move for an acquittal, object to any testimony or evidence presented at trial, and provide him with copies of his trial transcript; and b) the Superior Court abused its discretion by dismissing as procedurally barred his claims of insufficiency of the evidence, improper jury instructions, violation of the "knock and announce" rule and improper testimony by the State's expert.

(4) In order to prevail on a claim of ineffective assistance of counsel, the defendant must show that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of

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<sup>1</sup> *Anderson v. State*, Del. Supr., No. 322, 2003, Jacobs, J. (April 5, 2004).

the proceedings would have been different.<sup>2</sup> Although not insurmountable, the Strickland standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”<sup>3</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>4</sup>

(5) We have reviewed carefully the record and find no factual support for any of Anderson’s claims of ineffective assistance on the part of his trial counsel. There is, moreover, no evidence that any alleged error on the part of Anderson’s trial counsel resulted in prejudice to him. As such, there was no abuse of discretion on the part of the Superior Court in denying Anderson’s claims of ineffective assistance of counsel.<sup>5</sup>

(6) We also find no error or abuse of discretion on the part of the Superior Court in denying Anderson’s additional claims as procedurally barred.<sup>6</sup> Moreover, we find no error or abuse of discretion in the Superior Court’s determination that there was no colorable claim of a miscarriage of justice because of a constitutional violation that undermined the fundamental

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<sup>2</sup> *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>3</sup> *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

<sup>4</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

<sup>5</sup> *Outten v. State*, 720 A.2d 547, 551 (Del. 1998).

<sup>6</sup> Super. Ct. Crim. R. 61(i) (3) (A) and (B); Super. Ct. Crim. R. 61(i) (4).

legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.<sup>7</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>7</sup> Super. Ct. Crim. R. 61(i) (5).