

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
) No. 185, 2005
 Plaintiff Below,)
 Appellant,) Court Below: Superior Court
) of the State of Delaware in
 v.) and for Sussex County
)
 PEDRO E. CINTRA,) Case No. 0212008011
)
 Defendant Below,)
 Appellee.)

Submitted: December 14, 2005

Decided: December 23, 2005

Before **STEELE**, Chief Justice, **HOLLAND**, and **JACOBS**, Justices.

ORDER

This 23rd day of December, 2005, upon consideration of the briefs of the parties, it appears to the Court as follows:

(1) This is the State's appeal from a Superior Court order granting the defendant-appellee, Pedro Cintra's, motion for post-conviction relief. The Superior Court judge concluded that Cintra had not knowingly and intelligently waived his *Miranda* rights and that, accordingly, Cintra's trial counsel was constitutionally ineffective under the first prong of *Strickland*¹ because he failed to

¹ *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy a two-pronged test: (1) that trial counsel's actions fell below an objective standard of reasonableness and (2) there exists a reasonable probability that, but for counsel's unprofessional errors, the result of the trial would have been different.

move to suppress the statement Cintra made to the police. The Superior Court judge also concluded that Cintra had established the required prejudice under the second prong of *Strickland*. Accordingly, the Superior Court judge granted Cintra's motion for post-conviction relief, vacated his guilty verdicts, and ordered that the case be scheduled for a new trial. The State contends that in doing so the Superior Court judge abused his discretion.²

(2) The State first contends that the Superior Court Judge's factual finding that Cintra did not knowingly and intelligently waive his *Miranda* rights is not supported by the record. We disagree. The Superior Court judge deciding the motion for post-conviction relief, the same judge who presided at Cintra's trial, found that Cintra was "highly intoxicated" and that English was not his native language. Although we may have found differently had we been sitting as the trier of fact in the first instance, under the circumstances, the Superior Court Judge did not abuse his discretion by finding that a knowing and intelligent waiver could not be inferred from Cintra's responses to the officer's questions. Nor did the Superior Court judge abuse his discretion when he found that "had the suppression motion

² *Zebroski v. State*, 822 A.2d 1038, 1043 (Del. 2003). We review for an abuse of discretion the Superior Court's decision on a motion for post-conviction relief based upon ineffective assistance of counsel.

been filed, it would have been granted.”³ These findings satisfied the first prong of the *Strickland* test.

(3) The State correctly points out that the Superior Court judge made an erroneous finding of fact. In his letter opinion, the Superior Court judge noted:

The tape recording of the interview demonstrates that the Defendant was fully advised of his Miranda rights. *However, the officer did not ask the Defendant if he understood those rights* or whether he wished to waive them and talk with the officer. After informing the Defendant of his rights, the officer immediately asked the Defendant what occurred that evening and the Defendant gave an incriminating response. (emphasis added).

After reviewing the tape recording of the officer’s interview with Cintra, State’s Exhibit 12, we must conclude that the Superior Court judge’s factual finding on this one issue was unsupported by the record and, accordingly, was clearly erroneous. The officer read Cintra his *Miranda* rights and then clearly asked, “Pedro, do you understand them rights?” Cintra responded, “I been down the... I been down down [sic] there before.” The officer asked again, “Okay, So you do understand the rights?” The officer then proceeded to interrogate Cintra. The officer did not ask Cintra if he wished to waive his rights. Indeed, the State concedes that there was no express waiver in this case.

³ *State v. Cintra*, Case No: 0212008011, Letter Opinion at 4.

(4) The Superior Court judge's erroneous factual finding does not require us to reverse his order granting Cintra's motion for post-conviction relief, however. The issue is whether Cintra knowingly and intelligently waived his rights. The Superior Court judge noted the State's argument "that a knowing and intelligent waiver can be inferred from the circumstances and the fact that the Defendant knew his rights but nevertheless answered the officer's questions." Thus, the Superior Court judge clearly considered at least the possibility that Cintra *knew* his rights when he weighed the totality of the circumstances to determine if Cintra *waived* his *Miranda* rights. Despite the one clearly erroneous finding of fact, given the totality of the circumstances and the other facts on the record, we cannot say that the trial judge abused his discretion in finding that a knowing and intelligent waiver could not be inferred.

(5) We note that the State had the opportunity to argue to the Superior Court judge that he misapprehended that one fact, yet the State failed to do so. On April 7, 2005, the Superior Court judge submitted his letter opinion granting Cintra's motion for post-conviction relief. On April 28, the Deputy Attorney General sent a letter to the Superior Court judge stating, "In light of the fact that the Court has ruled on the pending Rule 61 motion, the State will not be filing its brief, which was due on April 28th." Several days later, on May 2, 2005, the Superior Court judge responded to the Deputy Attorney General's letter, apologizing for deciding

the motion before the State's brief was filed.⁴ He also advised the State that he could vacate his decision or treat the Deputy Attorney General's letter as a motion for reargument with no time limitations. The Superior Court judge then asked the State to advise him of its position. Rather than doing so, the State filed a notice of appeal on May 5, 2005 and on May 11, 2005, responded to the Superior Court judge's letter of May 2 by informing him that the State had filed a notice of appeal to this Court.

(6) It was certainly within the trial judge's discretion to vacate his order granting Cintra's motion for post-conviction relief. Indeed the trial judge could have done so without input from either party or over the objection of either or both parties.⁵ The State's chosen course of action in immediately appealing the Superior Court's letter opinion and order, after the Superior Court judge had given the State the opportunity to have the opinion vacated, deprived the Superior Court judge, the trier of fact in the first instance, of the opportunity (1) to hear from both sides before issuing a decision; and, (2) to revisit the record to correct any alleged erroneous finding of fact. The State's actions thus exacerbated the Superior Court

⁴ The Superior Court judge wrote, "It is obvious that I owe [the Deputy Attorney General] an apology. The Cintra file was on my work pile and I started my work, forgetting that the State wanted a brief schedule."

⁵ *State v. Sloman*, 2005 Del. LEXIS 431, *23 (Del. 2005) ("It is a basic principle of jurisprudence that courts are generally afforded inherent powers to undertake whatever action is reasonably necessary to ensure the proper administration of justice. This Court has consistently held that Delaware courts have the inherent power to vacate, modify or set aside their judgments or Orders.") (citations omitted).

judge's error in deciding the case before receiving the State's brief, and essentially thwarted the Superior Court judge's reasonable efforts to correct his error. This Court will not sit as a finder of fact in the first instance and entertain an argument that the State failed to present to the Superior Court judge when it had the opportunity to do so. In any event, and to reiterate, even if the Superior Court judge misapprehended one fact, that does not automatically vitiate the Superior Court judge's holding that Cintra did not knowingly and intelligently waive his *Miranda* rights.

(7) The State also claims that the Superior Court judge abused his discretion when concluding that Cintra established prejudice under the second prong of *Strickland*, because the judge applied the wrong legal standard. To illustrate its claim that the Superior Court judge applied the wrong standard, the State quotes the Superior Court judge's statement that,

The State's case relied substantially upon the Defendant's statement. I cannot find that the use of his statement was harmless to his eventual conviction. Therefore, the defendant has established the necessary prejudice under *Strickland*. His attorney was ineffective for not filing a Motion to Suppress and that error by counsel had a causal relationship to the guilty verdict.⁶

We agree with the State that this statement, at first blush, makes it appear that the Superior Court judge applied the wrong legal standard on the second prong of *Strickland*. The Superior Court judge, however, articulated the law more

⁶ Letter Opinion at 4.

accurately at an earlier portion of his letter opinion that set forth the *Strickland* standard: “To demonstrate a claim of ineffective assistance of counsel, a Defendant must establish that his counsel committed error at the trial level, based upon an objective standard of reasonableness, and that the error resulted in a material prejudice to the Defendant.”⁷ Given the overall context of the apparent misstatement within the Superior Court judge’s letter opinion and his conclusion that “error by counsel had a causal relationship to the guilty verdict,”⁸ we cannot say that the judge incorrectly applied the second prong of the *Strickland* standard by (as the State argues) “shift[ing] the burden to the State to show that the error was harmless.”⁹

(8) The State argues that the Superior Court judge “overlooked or ignored” the substantial evidence of Cintra’s guilt that was independent of his taped statement. The Superior Court judge essentially concluded that there was a reasonable probability that the result of the trial would have been different but for counsel’s failure to move to suppress. Moreover, the Superior Court judge who

⁷ *Id.* at 2.

⁸ The Superior Court judge’s conclusion is in accordance with the second prong of *Strickland*. Just because the Superior Court judge failed to use the exact “reasonable probability that, but for counsel’s unprofessional errors, the result of the trial would have been different” language to articulate why Cintra was prejudiced, it is clear from the context that this is what he meant.

⁹ Again, the State could have accepted the Superior Court judge’s offer to vacate his letter opinion. The State then would have had the opportunity to help the Superior Court judge correct the error of law he allegedly made by misapplying the second prong of *Strickland*.

rendered the Rule 61 post-conviction relief judgment also presided over the trial. He was, therefore, particularly well-situated to make the assessment that the result of the trial would have been different but for counsel's error. We cannot say that the Superior Court judge abused his discretion by determining that the defendant established prejudice under the second prong of *Strickland* because he overlooked or ignored other substantial evidence of Cintra's guilt.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice