

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT GARVEY,	§	
	§	No. 304, 2006
Defendant Below,	§	
Appellant,	§	Court Below – Superior Court of the
	§	State of Delaware, in and for New
v.	§	Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 010710230
Appellee.	§	

Submitted: January 26, 2007
Decided: April 26, 2007

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

ORDER

This 26th day of April 2007, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The appellant, Robert Garvey, has filed an appeal from the Superior Court's denial of postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61").¹ We find no merit to the appeal. Accordingly, we affirm.

(2) In October 2003, a Superior Court jury convicted Garvey of eight felony offenses, including Felony Murder in the First Degree and Robbery in the First

¹*State v. Garvey*, 2006 WL 1495786 (Del. Super. Ct.).

Degree. Garvey was sentenced to life in prison without parole. On direct appeal, this Court affirmed Garvey's convictions.²

(3) In 2005, Garvey sought postconviction relief on the basis that his trial counsel ("counsel") provided ineffective assistance on direct appeal.³ Garvey claims that counsel failed to raise a speedy trial violation, failed to challenge the Superior Court's denial of a motion to suppress, and failed to challenge a warrantless search of a gym bag.⁴ To succeed on his postconviction motion, Garvey was required to establish that 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 convictions would have been reversed on appeal.⁵

(4) When considering Garvey's allegations of ineffective counsel, the Superior Court considered the premise of those allegations in view of the record, the State's response to the allegations and counsel's Rule 61(g)(2) affidavits.⁶ For

²*Garvey v. State*, 873 A.2d 291 (Del. 2005).

³Before trial, Garvey requested and was granted the appointment of new counsel who represented Garvey throughout the trial and on direct appeal.

⁴Garvey has not pursued a claim that counsel failed to challenge the Superior Court's denial of a motion for judgment of acquittal. As a result, the claim is deemed waived and will not be addressed by this Court. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

⁵*Strickland v. Washington*, 466 U.S. 668, 688, 693 (1984).

⁶*See* Del. Super. Ct. Crim. R. 61(g)(2) (2007) (providing that Superior Court may direct that defense counsel file an affidavit in response to allegations of ineffective assistance of counsel).

instance, when determining whether counsel was ineffective for not arguing a speedy trial claim on appeal, the Superior Court considered whether Garvey's right to a speedy trial had been violated.⁷ When determining whether counsel failed to challenge the denial of a motion to suppress an arrest for lack of probable cause, the Superior Court reviewed the record to determine whether Garvey's arrest was made with sufficient probable cause. Finally, when considering whether counsel was ineffective for failing to argue on appeal that the warrantless search of a gym bag violated the Fourth Amendment, the Superior Court considered whether the search fell within a recognized exception to the warrant requirement.⁸

(5) From its thorough analysis the Superior Court concluded that each underlying claim of error, *i.e.*, speedy trial violation, illegal arrest, and illegal search and seizure, was without substantive merit, and that counsel therefore could not be faulted for failing to advance the claim on appeal.⁹ We conclude likewise after

⁷See *Middlebrook v. State*, 802 A.2d 268, 273 (Del. 2002) (citing *Barker v. Wingo*, 402 U.S. 514, 530 (1972) (identifying four factors to consider when assessing speedy trial violation: length of delay, reason for delay, assertion of the right, and prejudice).

⁸See *Coley v. State*, 2005 WL 2679329 (Del. Supr.) (citing *Chimel v. California*, 395 U.S. 752 (1969) (discussing search incident to lawful arrest exception).

⁹*Cf. Skinner v. State*, 607 A.2d 1170, 1173 (Del. 1992) (holding that rejection of the underlying substantive issue precluded a showing of prejudice on a related claim of ineffective assistance of counsel).

carefully considering Garvey's claims of ineffective assistance of counsel, the Superior Court record, and the parties' arguments on appeal.

(6) Garvey has not demonstrated that counsel's performance fell below an objective standard of reasonableness or that any alleged error on the part of counsel resulted in prejudice. Thus, for the reasons stated in the Superior Court's decision of May 26, 2006, and in the absence of any indication in the briefs that error on the part of counsel prejudiced Garvey, we conclude that Garvey's appeal from the denial of postconviction relief is without merit.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice