

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID C. REID,	§
	§
Defendant Below-	§ No. 245, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0403025083
Plaintiff Below-	§
Appellee.	§

Submitted: July 18, 2007  
Decided: October 15, 2007

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

**ORDER**

This 15th day of October 2007, upon consideration of the appellant’s opening brief, the State’s motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, David Reid, filed this appeal from the Superior Court’s denial of his first petition for postconviction relief. The State of Delaware has moved to affirm the Superior Court’s judgment on the ground that it is manifest on the face of Reid’s opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that in 2005 a Superior Court jury convicted Reid of Rape in the Third Degree and Unlawful Sexual Contact in the

Second Degree. The victim was the minor daughter of Reid's girlfriend. This Court affirmed Reid's convictions and sentence on direct appeal.<sup>1</sup>

In December 2005, Reid filed his first motion for postconviction relief, which enumerated seven overlapping claims, including two claims of ineffective assistance of trial counsel. The Superior Court referred the motion to a Superior Court Commissioner. The Commissioner issued a report recommending that the motion be denied. The Superior Court, after a *de novo* review, adopted the Commissioner's findings and recommendation and denied Reid's motion. This appeal followed.

(3) We review the Superior Court's denial of postconviction relief under Rule 61 for abuse of discretion.<sup>2</sup> In his opening brief on appeal, Reid makes statements, which he labels as "facts," but does not enumerate any particular argument, nor does he cite any legal authority. The gist of Reid's complaints appear to surround the State's use at trial of several audiotaped statements in which Reid incriminated himself during police questioning. Reid appears to contend that the voice on the tapes is not his, that the State tampered with the tapes, that the tapes were not properly authenticated, and that his counsel was ineffective for failing to have the tapes properly

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<sup>1</sup> *Reid v. State*, 2005 WL 3272134 (Del. Nov. 30, 2005).

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

analyzed. Reid also appears to argue that, without the tapes, the evidence against him would have been insufficient to support a guilty verdict.<sup>3</sup>

(4) To prevail on a claim of ineffective assistance of counsel, a petitioner is required to establish: (a) that defense counsel's representation fell below an objective standard of reasonableness; and (b) that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the case would have been different.<sup>4</sup> There is a strong presumption that counsel's conduct was professionally reasonable.<sup>5</sup>

(5) Reid's claim fails on both prongs. The investigating police officer testified at Reid's trial and identified Reid as the speaker on the audiotaped statements played for the jury. That identification was sufficient to authenticate the taped statements, contrary to Reid's assertion.<sup>6</sup> Accordingly, there was no basis for defense counsel to object to the admission of the taped statements. Moreover, Reid can establish no prejudice from his counsel's failure to have the tapes analyzed because his

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<sup>3</sup> To the extent Reid raised other claims below, he failed to address those issues in his opening brief. Accordingly, those claims are deemed to be waived on appeal. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

<sup>4</sup> *Outten v. State*, 720 A.2d at 551-52 (citing the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 688 (1984)).

<sup>5</sup> *Albury v. State*, 551 A.2d 53, 59 (Del. 1988).

<sup>6</sup> See Del. R. Evid. 901.

contention that the State tampered with the tapes is conclusory and wholly unsubstantiated.<sup>7</sup>

(6) Finally, to the extent Reid’s brief can be interpreted to raise a claim of ineffective assistance of counsel based on counsel’s failure to move for a judgment of acquittal, we find no merit to such a claim. As this Court held in Reid’s direct appeal, the evidence at trial was sufficient to support the jury’s verdict.<sup>8</sup> Accordingly, Reid can establish neither cause nor prejudice from counsel’s failure to move for a judgment of acquittal.<sup>9</sup>

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

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>7</sup> See *Gattis v. State*, 697 A.2d 1174, 1178-79 (Del. 1997).

<sup>8</sup> *Reid v. State*, 2005 WL 3272134 (Del. Nov. 30, 2005).

<sup>9</sup> See Del. Super. Ct. Crim. R. 61(i)(3), which provides that “[a]ny ground for relief that was not asserted in the proceedings leading to the judgment of conviction...is thereafter barred” unless the petitioner can establish cause and prejudice.