

An appeal from the Commissioner's Findings of Fact and Recommendation was filed on January 11, 2012.¹

3) In his Report, the Commissioner found that the Defendant had failed to establish any of his proffered grounds for ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984). Specifically, as to the first ground, the Commissioner concluded that defense counsel was not ineffective for failing to more strongly urge the Defendant to accept the State's plea offer. In this regard, the Commissioner correctly determined that defense counsel provided the Defendant with all of the information he needed to evaluate the State's plea offer, including his best assessment of the chance of success at trial. That Defendant ultimately was found guilty of some of the charges does not render defense counsel's advice regarding the State's plea offer ineffective. The Court will adopt the Commissioner's findings rejecting this ground for relief.

4) Next, the Commissioner found that defense counsel's open-ended question to the State's Chief Investigating Officer, which yielded a response that suggested the Defendant had invoked his right to remain silent, did not constitute ineffective assistance of counsel. The Court adopts the Report's thorough analysis of this issue. Simply stated, the question did not reflect substandard conduct and

¹ Based on the unique circumstances set forth in the Defendant's appeal papers, the Court has excused defense counsel's untimely filing pursuant to Del. Super. Ct. Crim. R. 62 (a)(1)(ii).

the response to the question cannot form the basis of a valid “prejudice” argument under *Strickland*.

5) Likewise, the Report properly concluded that defense counsel’s strategic decision not to object to the admission of statements from the alleged victims, under 11 *Del. C.* § 3507, did not reflect ineffective assistance as defined in *Strickland*. The Report properly concluded that defense counsel acted within his sound professional discretion when he determined that inconsistencies in the statements would work to the benefit of the Defendant.

6) The Report concluded that defense counsel was ineffective when he inadvertently referred to the State’s complaining witnesses as “victims.” Upon reviewing the record, and particularly the infrequency of these comments and the context in which they were made, the Court does not share the Commissioner’s view that counsel was ineffective on this ground. Nevertheless, the Court does agree with the Report’s finding that any references to the term “victim” did not result in “actual prejudice” to the Defendant under *Strickland*.

7) The Court likewise agrees with the Report’s finding that defense counsel’s failure to object to comments during the State’s closing argument, which allegedly stated the Prosecutor’s personal view of the evidence, did not constitute ineffective assistance of counsel. If the comments were objectionable at all, which

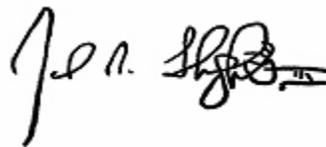
they were not, Defendant has failed to demonstrate that the failure to object to them caused prejudice under *Strickland*.

8) Because the Court has found that none of the Defendant's claims of ineffective assistance of counsel have merit, the Court agrees with the Report's conclusion that the cumulative effect of counsel's alleged ineffectiveness does not amount to ineffective assistance of counsel as contemplated by *Strickland*.

9) Finally, the Court finds that an evidentiary hearing is not necessary to evaluate the Defendant's claims. See *Walker v. State*, 935 A.2d 256 (Del. 2007); *Brown v. State*, 931 A.2d 436 (Del. 2007).

NOW THEREFORE, after careful and *de novo* review of the record in this action, and for reasons stated in the Commissioner's Report and above, Defendant's Motion for Postconviction Relief is **DENIED**.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "J. R. Slights, III". The signature is written in a cursive, somewhat stylized font.

Judge Joseph R. Slights, III

cc: Prothonotary – Original
Mr. Robert Burns
Josette D. Manning, Deputy Attorney General
Eugene J. Maurer, Jr., Esquire