

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE)	
)	
v.)	I.D. No. 991016961
)	
DARREL PAGE,)	
)	
Defendant.)	

UPON CONSIDERATION OF DEFENDANT’S
FIRST MOTION FOR POSTCONVICTION RELIEF
**DENIED in part and
SUMMARILY DISMISSED in part**

Submitted: April 22, 2009
Decided: April 28, 2009

This 28th day of April, 2009, it appears to the Court that:

1. Darrel Page (“Page”) was convicted by a jury of three counts of First Degree Murder, one count of Robbery Second Degree, one count of Conspiracy First Degree, one count of Endangering the Welfare of a Child, and various weapons charges. He received three life sentences without possibility of probation or parole on the murder counts. On direct appeal, the Delaware Supreme Court affirmed Page’s convictions and sentence. Now before the Court is Page’s first Motion for Postconviction Relief.

2. Page and co-defendant Michael Jones belonged to a Wilmington drug-dealing ring led by Cedric Reinford.¹ Reinford arranged for the delivery of large shipments of crack cocaine and marijuana from New York City to Delaware, where they were divided for retail sale by several dealers, including Page and Jones. Working together, Page and Jones sold for Reinford out of the home of Page's girlfriend, Kim Still.

3. In 1999, Page was arrested for trafficking in cocaine. After this arrest, Reinford agreed to pay for Page's bail and defense counsel. In exchange, Page was expected to conduct drug sales for Reinford without receiving any portion of the proceeds. After nine months operating under this agreement, Page decided to kill Reinford in order to escape it. Page developed a plan to rob Reinford of a large drug payment and then murder him, hoping it would appear that Reinford had been killed during a drug sale or a confrontation with a rival drug gang. Page sought assistance from Jones.

4. On November 20, 1999, Page and Jones carried out the plan. The two men met Reinford in Reinford's car, where Jones killed Reinford by shooting him three times in the head. Page and Jones then doused the car

¹ For a more detailed recounting of the factual and procedural background of Page's case, see *Page v. State*, 934 A.2d 891 (Del. 2007).

with gasoline and set it on fire. Next, Page and Jones went to Reinford's house in order to take drug money from a safe located there. At Reinford's house, Page and Jones encountered Reinford's fiancé, Maneeka Plant, as well as his brother, Muhammad. Jones fatally shot Plant as she tried to protect her infant son, and then shot Muhammad between the eyes.

5. Page and Jones left Muhammad for dead, but he survived the shooting and identified Page as one of his attackers. During the ensuing police investigation, officers questioned Kim Still, who detailed Page's plan to murder Reinford. Page and Jones fled the area, and Page was not apprehended until November 2000.

6. Page was indicted on January 29, 2001, and subsequently appointed counsel. Several factors delayed trial in his case. First, appointed counsel promptly advised the Court that they would not be able to try the case within a year of Page's arrest because of their commitments to other court-appointed homicide cases.² Trial was accordingly scheduled for

² Delaware Supreme Court Administrative Directive No. 88, which was in effect at the time of Page's arrest, provided for the scheduling of capital cases as follows:

All [capital] cases must be tried and/or otherwise adjudicated within one year from the date of the arrest Because of their complexity, capital cases occasionally may present unique problems that preclude a trial or other disposition within the one-year period. A judge therefore may depart from those guidelines when the interests of justice require.

February 2002. Shortly before this trial date, defense counsel notified the Court that an expert and investigator crucial to its case were unwilling to work without an advanced retainer fee. This Court sought approval for funding from the Delaware Supreme Court, but was informed that the State would not be funding such expenditures until after the end of the fiscal year on June 30, 2002. Page's counsel therefore moved for a continuance, which the Court granted. Page was given a new trial date of September 10, 2002. Three months before this trial date, however, the United States Supreme Court decided *Ring v. Arizona*,³ which necessitated amendments to Delaware's capital case procedures. All capital cases in Superior Court were temporarily stayed until the Delaware Supreme Court issued a determination on several certified questions arising from these amendments.⁴ This stay remained in effect until January 27, 2003.

7. After the stay was lifted, the Court was able to proceed with trial in Page's case on May 20, 2003. Page was tried before a Superior Court jury and convicted of three counts of First Degree Murder, one count

Administrative Directive No. 88 was subsequently superseded by Administrative Directive No. 131, which monitors capital cases from the time of indictment, rather than arrest. *See* Admin. Directive No. 131 (Del. July 11, 2001).

³ 536 U.S. 584 (2002).

⁴ *See Brice v. State*, 815 A.2d 314 (Del. 2003).

each of Robbery Second Degree, Conspiracy First Degree, and Endangering the Welfare of a Child, as well as various weapons charges. In the penalty phase, the jury recommended death sentences on each of Page's three Murder First Degree convictions. This Court imposed a sentence of life imprisonment for each of the murder counts.

8. Page timely appealed his convictions and sentence to the Delaware Supreme Court. On appeal, Page argued that (1) the State violated his Sixth Amendment right to a speedy trial; (2) he received ineffective assistance of counsel at trial; and (3) the trial judge erred in admitting certain photographs, crime scene video, and video of Kim Still's out-of-court statements to police.⁵ The Supreme Court declined to address Page's ineffective assistance claim, since it had not been previously raised in this Court.⁶

9. As to Page's other grounds, the Supreme Court held that they were without merit and affirmed Page's convictions. Specifically, the Supreme Court found that (1) there was no infringement of Page's speedy trial right as a result of the time lapse between his arrest and his trial under

⁵ *Page*, 934 A.2d at 894.

⁶ *Id.* at 898-99 (citing *Duross v. State*, 494 A.2d 1265, 1267 (Del. 1985); *Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986)).

Barker v. Wingo;⁷ (2) admission of graphic photographs of Reinford’s charred remains and his burned car was within the trial court’s discretion, and moreover, that Page’s acquittal on the charge of Arson Second Degree rendered his claim of error moot; (3) the trial judge did not abuse her discretion by admitting crime scene video that included close-ups of Maneeka Plant’s body, as prosecutors are not obliged to select “the least dramatic means of presenting [their] evidence,” even if the result is a presentation that “may be gruesome or unpleasant”;⁸ (4) after the trial judge had viewed video of the statement and concluded that it was voluntary, she did not err by admitting evidence of Kim Still’s out-of-court statements to police pursuant to 11 *Del. C.* § 3507; and (5) the trial judge did not err in admitting the video of Still’s § 3507 statement as an exhibit. In accordance with these conclusions, Page’s convictions and sentence were upheld.⁹

10. Before the Court is Page’s first Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. Page’s motion presents the following six substantive bases for relief: (1) his trial was undermined by a “structural error” arising from “[t]he State’s failure to provide court-

⁷ 407 U.S. 514 (1972).

⁸ *Page*, 934 A.2d at 899-90 (quoting *Casalvera v. State*, 410 A.2d 1369, 1373 (Del. 1980); *Keperling v. State*, 699 A.2d 217, 319 (Del. 1997)).

⁹ *Id.* at 901.

appointed counsel who were contemporaneously able to provide effective assistance of counsel and protect and assert defendant's right to a speedy trial"; (2) trial counsel were ineffective for accepting appointment to his case given that their trial calendars prevented them from "assert[ing] and protect[ing] Movant's fundamental, constitutional right to a speedy trial"; (3) the Court erred by admitting photographs and crime scene video tape that it "expressly found to be . . . unfairly prejudicial"; (4) the Court erred in admitting Still's § 3507 statement, because it was involuntary and because it was "cumulative and prejudicial"; (5) the Court abused its discretion by admitting the video tape of Still's § 3507 statement as a trial exhibit; and (6) trial counsel provided ineffective assistance on a variety of bases.¹⁰

11. Page's ineffective assistance claim encompasses numerous alleged errors by trial counsel. First, Page asserts that although his court-appointed counsel claimed to be so overwhelmed with other court-appointed homicide cases that they could not be prepared to try his case within a year, they nonetheless accepted, rather than declined, the Court's appointment, and their caseload interfered with their ability to adequately prepare to defend Page. Second, Page claims that on more than one occasion, defense counsel waived his constitutional rights without consulting with him, thus

¹⁰ See Docket 161 (Def.'s Mot. for Postconviction Relief).

depriving him of and violating his fundamental rights. Next, Page asserts that, because the State was seeking the death penalty in his case, trial counsel was ineffective for failing to file pre-trial or post-trial motions, or any motions challenging the efficacy of the death penalty on federal or state constitutional grounds. Finally, without further factual elaboration, Page asserts that his trial counsel failed to adequately review all of the evidence, did not consult him regarding the evidence and general trial preparation matters, neglected to advise him of his Fifth Amendment right not to testify at trial, failed to properly prepare him to testify at trial, and provided inadequate representation at trial.

12. Page's trial counsel responded to his ineffective assistance claims by affidavit provided upon the Court's request. Trial counsel denies that their other cases interfered with their ability to prepare and defend Page's case. Counsel states that they met several times with Page to review the case, his testimony, and the consequences of his testifying, including the fact that he would be subject to cross-examination. Furthermore, counsel explained to Page that although testifying would present risks, his affirmative defense would be meritless in the absence of his testimony. As to Page's other allegations, counsel submits that they are too vague for any specific response to be provided.

13. Before addressing the substantive merits of any claim for postconviction relief, the Court must determine whether the defendant has satisfied the procedural requirements of Superior Court Criminal Rule 61 (“Rule 61”).¹¹ To protect the procedural integrity of Delaware’s rules, the Court will not consider the merits of a postconviction claim that fails any of Rule 61’s procedural requirements.¹²

14. Rule 61(i) establishes four procedural bars to motions for postconviction relief: (1) the motion must be filed within one year of a final judgment of conviction; (2) any grounds for relief which were not asserted previously in any prior postconviction proceeding are barred; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules; and (4) any basis for relief must not have been formerly adjudicated in any proceeding. However, a defect under Rule 61(i)(1), (2), or (3) will not bar a movant’s “claim that the court lacked jurisdiction or . . . a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity, or fairness of the proceedings leading to the judgment of

¹¹ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990); see also *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *State v. Mayfield*, 2003 WL 21267422, at *2 (Del. Super. June 2, 2003).

¹² *State v. Gattis*, 1995 WL 790951, at *3 (Del. Super. Dec. 28, 1995) (citing *Younger*, 580 A.2d at 554).

conviction.”¹³ Because a claim of ineffective assistance of counsel alleges a constitutional violation meeting this standard, colorable ineffective assistance claims are not subject to the procedural bars contained in Rule 61(i)(1), (2), or (3).¹⁴

15. Applying the procedural bars of Rule 61(i), Page’s first through fifth grounds are barred as formerly adjudicated on direct appeal under Rule 61(i)(4). As previously discussed, the Supreme Court found that there had been no infringement of Page’s speedy trial right as a result of the delay between his arrest and his trial. Page’s second ground, arguing that trial counsel were ineffective because their pre-existing trial schedules conflicted with Page’s speedy trial right, essentially repackages Page’s speedy trial claim under the auspices of ineffective assistance, and therefore is also barred.¹⁵ The Supreme Court also found that this Court had not committed error or abuse of discretion in admitting photographs of Reinford’s body, crime scene video footage, or the video of Still’s § 3507 statement.

¹³ Super. Ct. Crim. R. 61(i)(5).

¹⁴ See *State v. MacDonald*, 2007 WL 1378332, at *4, n. 17 (Del. Super. May 9, 2007).

¹⁵ See *State v. Finocchiaro*, 1994 WL 682434, at *2 (Del. Super. Nov. 16, 1994) (“Defendant cannot simply restate his claim . . . as one of ineffective assistance of counsel and expect it to be considered anew. The Superior Court is not required to reexamine a claim that has received ‘substantive resolution’ at an earlier time simply because the claim is refined or restated.” (citing *Johnson v. State*, 1992 WL 183069, at *1 (Del. June 30, 1992))).

16. The Court now turns to the remainder of Page’s ineffective assistance claims. To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy the two-part test of *Strickland v. Washington* by showing both: (1) that counsel’s representation fell below an objective standard of reasonableness, and (2) that the errors by counsel amounted to prejudice.¹⁶ The defendant faces a “strong presumption that the representation was professionally reasonable” in attempting to meet the first prong.¹⁷ Under the second prong, the defendant must affirmatively demonstrate prejudice by showing a reasonable probability that, but for counsel’s errors, the proceeding would have had a different result.¹⁸ If either prong is not met, the defendant’s claim fails.

17. Furthermore, a defendant bringing a postconviction claim must “set forth in summary form the facts supporting each of the grounds . . . specified.”¹⁹ Under Rule 61(d), summary dismissal is appropriate “[i]f it plainly appears from the motion for postconviction relief and the record of

¹⁶ *Albury v. State*, 551 A.2d 53, 58 (Del. 1988) (citing *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984)).

¹⁷ *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996) (citation omitted).

¹⁸ *Strickland*, 466 U.S. at 694; *see also Fletcher v. State*, 2006 WL 1237088, at *2 (Del. Super. May 9, 2006).

¹⁹ Super. Ct. Crim. R. 61(b)(2).

prior proceedings in the case that the movant is not entitled to relief.”²⁰

Thus, to satisfy the *Strickland* standard, a defendant must present concrete allegations of ineffective assistance; conclusory allegations risk summary dismissal.²¹

18. Page’s ineffective assistance allegations are devoid of factual support and entirely conclusory. Page does not identify the rights he contends trial counsel waived without consultation, the motions he apparently believes counsel should have filed, or the particular pieces of evidence he contends counsel did not adequately review. Page further claims that counsel failed to consult him regarding his testimony and the evidence, but provides no concrete details as to what topics counsel allegedly neglected to address with him. Other than his argument that counsel’s pre-existing trial schedule resulted in a denial of his speedy trial right, addressed above, Page does not offer any specific reasons as to why counsel’s caseload prevented adequate preparation for his trial. Furthermore, none of Page’s allegations describe how counsel’s adoption of a different course of action would have altered the outcome of his trial or

²⁰ Super. Ct. Crim. R. 61(d)(4).

²¹ See, e.g., *Jordan v. State*, 648 A.2d 424 (Del. 1994); *State v. Chambers*, 2008 WL 4137988, at *1-2 (Del. Super. Aug. 25, 2008); *State v. Robbins*, 1996 WL 769219, at *2 (Del. Super. Dec. 18, 1996).

sentencing. It is difficult to conceive, for example, how trial counsel's failure to file motions challenging the efficacy of the death penalty could have resulted in prejudice to Page when he received life sentences. Because it is apparent from the face of Page's motion and the record of prior proceedings that his ineffective assistance of counsel claims are wholly conclusory and cannot meet the *Strickland* standard, they are summarily dismissed.

19. Finally, Page has requested oral argument and an evidentiary hearing concerning the grounds raised in his motion. An evidentiary hearing may be ordered in the Court's discretion, "[a]fter considering the motion for postconviction relief, the state's response, the movant's reply, if any, the record of prior proceedings in the case, and any added materials."²² Because review of Page's motion and the record demonstrates that all of Page's claims are either procedurally barred or subject to summary dismissal, Page's request for a hearing is denied.

²² Del. Super. Ct. Crim. R. 61(h)(1).

20. For the foregoing reasons, Page's motion for postconviction relief is hereby **DENIED in part** and **SUMMARILY DISMISSED in part**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

cc: Anthony A. Figliola, Jr., Esq.
Joseph A. Gabay, Esq.
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