

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

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|---------------------|---|-----------------|
| STATE OF DELAWARE, |) | |
| |) | |
| v. |) | ID#: 0406005054 |
| |) | |
| MELVIN L. WILLIAMS, |) | |
| |) | |
| Defendant. |) | |

Submitted: February 5, 2009
Decided: May 28, 2009

ORDER

Upon Defendant's Motion for Postconviction Relief – *DENIED*

1. For shooting a man in the head four times at close range, Williams was convicted by a jury of first degree murder and weapons offenses. As required by law,¹ the court sentenced Williams to life in prison for the murder, plus time for the weapons offenses. The convictions and sentences were affirmed on direct appeal, and the mandate was received on April 17, 2007.

2. Through new counsel, on March 25, 2008, Williams filed a timely motion for postconviction relief under Superior Court Criminal Rule 61. The

¹ 11 *Del. C.* § 4209(a).

motion was properly referred by the Prothonotary.²

3. After preliminary review,³ and consistent with *Horne v. State*,⁴ on May 5, 2008, the court called for trial counsel's affidavit, which was filed on May 23, 2008.

4. On August 1, 2008, the court called for the State's response to the motion and affidavit.⁵ The court also granted leave for Defendant to reply.⁶ The State filed its response on October 1, 2008. Defendant filed no reply. After reviewing the submissions further, the court called on Defendant to provide additional supporting documentation, which counsel filed, in so far as possible, on February 5, 2009.

5. Williams alleges ineffective assistance of counsel in five ways:

- Trial counsel failed to move for judgment of acquittal due to insufficient evidence;
- Trial counsel failed to challenge the State's argument that Williams told a State's witness that Williams had committed a murder;

² Super. Ct. Crim. R. 61(d)(1).

³ *Id.*

⁴ *Horne v. State*, 887 A.2d 973, 975 (Del. 2005).

⁵ Super. Ct. Crim. R. 61(f).

⁶ *Id.*

- Trial counsel failed to introduce evidence that the reason Williams ran from the police was because he knew he was wanted for something else, not because he feared arrest for murder;
- Trial counsel failed to introduce evidence supporting the possibility that someone else committed the murder, and;
- Trial and appellant counsel failed to raise Williams's claims, and to develop an adequate record about them.

6. The State's case is reasonably well-summarized in Defendant's motion and the State's response. Basically, the State proved that the victim traded Williams a car for drugs. A few days later, the victim's decomposing body was found in the basement of a house that was rented by one of Williams's relatives, a cousin, who had given Williams a key and allowed Williams to live there off-and-on.

7. The State also presented evidence that Williams was present when his cousin discovered the body. The relative wanted to call the police, but Williams suggested putting the remains in a dumpster. Williams also speculated aloud that the person had been shot, without examining the corpse. When it was decided that the police would be called, Williams left.

8. When the police arrived, they found signs that someone had tried to clean-up the basement after the body was there, and Williams's fingerprints, and

others, on bottles of cleaning fluid left in the basement and kitchen. Later, the police also found latex gloves at Williams's residence, which were similar to latex gloves found near the body. A relative testified that it was unlikely Williams had a legitimate reason for using the bottles of cleaning fluids on which Williams's prints were found. Not all the physical evidence pointed to Williams, but no evidence excluded him as the killer. And, as presented above, much of the physical evidence was incriminating.

9. Ultimately, Williams was seen driving the car that the victim had traded him for drugs. When the police tried to stop Williams, he fled. As mentioned above, another of Williams's contentions is that the jury should have been told that he fled because he believed that he was wanted for other reasons, not because he knew he was implicated in a murder and he was driving the victim's car.

10. Finally, as to important facts, the State introduced testimony from another of Williams's relatives, a teenager, who claimed that while playing video games, he heard Williams say that Williams had "banked somebody in his cousin's basement." That testimony is significant because it underlies another of Williams's claims. Williams argues that to "bank someone," does not necessarily mean murder, and the jury should have been told that. Significantly, however, at trial the teenager largely recanted.

11. Turning to Williams’s claims, the court finds that a motion for judgment of acquittal would have been futile. Viewed in the proper light, the circumstantial evidence against Williams was damning. He had motive and opportunity. The body was found in a semi-private place to which Williams had access. Williams’s fingerprints were found under suspicious circumstances near the body. Physical evidence, the latex gloves and cleaning materials, further linked Williams to the body and a probable attempt to destroy evidence. Williams’s behavior surrounding the body’s discovery was also incriminating. In hindsight, trial counsel says he “made a bad decision” by not moving for judgment of acquittal. Now, trial counsel believes that “trial counsel should [never] not make that simple motion. . . .” This is so, despite his well-justified belief at the time that, under the circumstances, “the motion was borderline frivolous.”

12. In summary, as to trial counsel’s failure to file a motion for judgment of acquittal, the circumstances and coincidences pointing to Williams’s guilt were remarkable, and that is without considering Williams’s admission that he had “banked someone” in his cousin’s basement. In short, another trial lawyer might have filed a motion for acquittal, or not. The court, however, absolutely would have denied such a motion.

13. The court appreciates that this was Williams’s second trial. His

first trial ended in a hung-jury. Moreover, his second trial's deliberations started with a deadlock, 10-2. Even so, the State's case easily met the standard of review. The hung-jury was a high-water mark for the defense.

14. Technically, finding that the State presented sufficient evidence at trial may not dispose of Williams's entire argument. Williams also contends that by not making the motion at trial, trial counsel hamstrung his appeal, leaving him to argue "plain error." That, somehow, left him worse off. While it is true that failure to make a timely motion for judgment of acquittal is a waiver, leaving only a "plain error" review,⁷ that standard of review and the directed verdict standard are coextensive when it comes to insufficiency of evidence claims.⁸ In other words, when reviewing either a properly raised or a waived insufficiency of evidence claim in a criminal case, functionally, the same standard is applied: Viewed in the light most favorable to the State, could *any* rational fact-finder have found the defendant guilty beyond a reasonable doubt? If, upon either timely or untimely review, it appears

⁷ *Hardin v. State*, 844 A.2d 982, 989 (Del. 2004) (a waived claim will only receive review on appeal based upon the trial court's "plain error"); *Red Dog v. State*, 616 A.2d 298, 310 (Del. 1992) (The Supreme Court "does not review claims on appeal which were not raised and fairly presented to the trial court for decision, unless such review is required in the interest of justice, i.e., the plain violation of a fundamental right").

⁸ *See Monroe v. State*, 652 A.2d 560, 563 (Del. 1995) (motion to dismiss for insufficient evidence "waived" but "excused" "in the interests of justice," and failure to *sua sponte* grant acquittal after the State rested was plain error necessitating acquittal after appeal).

there was insufficient evidence, the interests of justice dictate entry of acquittal.⁹ Here, as explained above, there was sufficient evidence.

15. Williams's arguments that trial counsel failed to present less incriminating ways to interpret Williams's behavior, the "banked someone" statement and his flight from the police, present tactical decisions. Trial counsel's dwelling on those points might have softened their incriminating nature. In the process, however, trial counsel would have further drawn the jury's attention to those things. Meanwhile, whatever to "bank someone" might mean, if the jury believed that Williams admitted contact, whatsoever, with the victim in the basement where the victim's corpse was found, that would have been very unhelpful to Williams's cause. The court, therefore, finds that trial counsel's decision to challenge whether the statement was actually made, rather than to attempt to prove an alternate meaning, was a reasonable tactical decision and Williams suffered no prejudice from it. The same analysis applies to the evidence of flight. This is so, despite trial counsel's hindsight admission that he failed to properly represent his client. Telling the jury that Defendant fled because he was a fugitive would have partially addressed one problem by creating another.

16. Similarly, trial counsel's approach to the flimsy, convoluted and

⁹ *Id.*

inadmissible gossip allegedly pointing towards another's guilt was reasonable. Basically, Williams now contends that Williams's mother and another of his relatives would have testified that a third, more distant relative, the "suspect relative," told Defendant's mother not to go to the basement because "there was something down there." The "suspect relative" told the other relative that if the police asked him about the murder, he should tell the police that the victim had been shot in the head five times, and the "suspect relative" knew about that because Williams told the "suspect relative" directly. That is what the relative said the "suspect relative" said.

17. Taken together, according to Williams, what the relatives said the "suspect relative" said tends to prove that the "suspect relative" had guilty knowledge and, therefore, the "suspect relative" was the killer and he was trying to use Williams's relatives to frame Williams. This conclusion, of course, ignores the part of the "suspect relative's" statement where he said that what he knew of the murder came from Williams, on the street.

18. Williams argues that if trial counsel had pursued what Williams's next-of-kin said the "suspect relative" said, that would have raised reasonable doubt about Williams's guilt at trial. Trial counsel observes, however, that the defense at trial was "lack of evidence. . . not on bringing additional evidence that the defendant

committed the murder.” That still makes sense. The State did not introduce the “suspect relative’s” accusations. Trial counsel’s using the family gossip to indirectly cast suspicion on the “suspect relative” would have added a new voice to the chorus of accusations against Williams. Thus, trial counsel cannot be faulted for deciding not to risk introducing testimony about what the “suspect relative” allegedly said or, potentially worse, goading the State into calling the “suspect relative” as a State’s rebuttal witness.

19. In light of the above, Williams’s arguments about his appeal also fail to overcome the presumption of effective assistance.¹⁰ Williams tacitly concedes that appellate counsel did what could be done with the record created at trial. So, Williams is not denigrating his appellate counsel’s skill and effort. In essence, Williams argues that if his trial counsel had acted differently, Williams’s appellate counsel would have done better on appeal. That argument could work where trial counsel’s ineffectiveness creates a procedural impediment to an effective appeal. Williams’s faulting trial counsel for not moving for acquittal attempts such a claim. Williams’s other arguments about trial counsel do not, however, lead to

¹⁰ *Strickland v. Washington*, 466 U.S. 668, 689 (1984) (Defendant must overcome the strong presumption that counsel’s actions “might be considered sound trial strategy”) (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955); *Albury v. State*, 551 A.2d 53, 59 (Del. 1988) (an ineffective assistance of counsel claim is “subject to a strong presumption that counsel’s conduct was professionally reasonable”).

ineffectiveness of appellate counsel claims. For example, assuming it was derelict for trial counsel not to have introduced the family gossip, which it was not, the potential prejudice from that dereliction was the guilty verdict, not anything associated with the appeal.

20. Also in light of the above, there is insufficient basis for an evidentiary hearing. Left to its own determination as to what could be helpful here, the court imagines that it might hear Williams's next-of-kin relate what the "suspect relative" said to them and, perhaps, the "suspect relative" might offer denials or accusations, or he might refuse to testify. All that would just be unhelpful theatrics. In any event, Williams has not fleshed-out his request for an evidentiary hearing. And so, there is no demonstrated reason to hold one.

For the foregoing reasons, Defendant's motion for postconviction relief is **DENIED**.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary (Criminal)
Kevin M. Carroll, Deputy Attorney General
Saagar B. Shah, Esquire