

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

STATE OF DELAWARE

v.

TSCHAKA FORTT,

Defendant.

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ID No.: 9710005008

**FINAL ORDER**

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

On June 21, 2001, Tschaka Fortt filed a motion for postconviction relief, *pro se*. The motion alleged ineffective assistance of Fortt's trial counsel. The court ordered trial counsel to respond and it issued an order on December 13, 2001 denying Fortt's motion, in part. The court was concerned, however, about one aspect of Fortt's motion.

The court could not determine clearly whether Fortt might have benefitted from a pre-trial motion to suppress. Under Superior Court Criminal Rule 61(g)(2), the court appointed an independent, criminal defense attorney for the purpose of reviewing the circumstances surrounding Fortt's initial stop and

detention by the police. The court required Fortt's newly appointed defense counsel to advise the court as to whether further litigation concerning the suppression question was warranted.

On March 5, 2002 Fortt's newly appointed defense counsel submitted a letter concluding:

Based upon the information contained in the file, I believe the search of the vehicle [operated by Fortt] to have been improper, however, no evidence was seized during the vehicle search, thus nothing to suppress. The subsequent search of [Fortt's] apartment appears to have been subsequent to the approval of Mr. Fortt. However, it does seem strange that Fortt consented to a search of his residence, if he knew it contained drugs.

In short, though it may have been prudent to file a Suppression Motion, I cannot on the record in front of me determine or charge that it was ineffective not to have filed a Suppression Motion.

The court is not surprised by counsel's conclusions.

In summary, it is not established that a reasonably effective attorney would have filed a motion to suppress on Fortt's behalf. In the court's estimation, many local defense attorneys would have filed a motion, but not others. Moreover, Fortt has not established that he was prejudiced by the decision not to challenge his stop and detention. And of course, once he told the police that there were drugs in

his apartment, the police had more than enough evidence to procure a search warrant.

For the reasons given above and in the December 13, 2001 preliminary order, Defendant's June 21, 2001 motion is **DENIED**.

**IT IS SO ORDERED.**

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Date

Judge

cc: Prothonotary  
Cynthia R. Kelsey, Deputy Attorney General  
Raymond Radulski, Esquire  
Anthony Figliola, Esquire (Court-appointed counsel)  
Tschaka Fortt

bxc: Judge Gebelein