

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE,

:
:
:
:
:
:

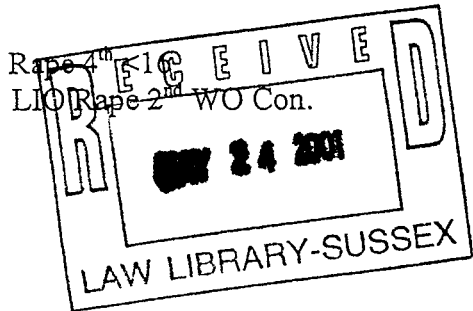
CrA. Nos:

99-10-0038 Rape 4th <10LIO Rape 2nd WO Con.

v.

ARTHUR J. NORWOOD

Def. ID# 9910002383



MEMORANDUM OPINION

This is my decision on Arthur J. Norwood's (hereinafter "Norwood") Motion for Postconviction Relief. The State filed an Information charging Norwood with one count of Rape in the Second Degree on October 25, 1999. Norwood was found guilty of Rape in the Fourth Degree after a jury trial on April 25, 2000. Norwood was sentenced to 8 years at supervision level 5 on June 16, 2000. After serving 2 years at supervision level 5, the balance of his sentence was suspended for 6 months at supervision level 4 work release, followed by 5 years at supervision level 3. Norwood did not file an appeal of his conviction with the Supreme Court. Norwood filed a Motion for Postconviction Relief on March 28, 2001. In support of his motion, Norwood argues that his attorney did not ask him if he wanted to file an appeal with the Supreme Court until after the time for filing such an appeal had expired. Norwood's former attorney filed an affidavit responding to Norwood's claim on April 17, 2001.

I first have to decide if Norwood's claim is barred by the procedural requirements of Superior Court Criminal Rule 61.¹ Norwood did not file an appeal with the Supreme Court. This is Norwood's first Motion for Postconviction Relief. It was filed within the time limits set forth by Rule 61. Therefore, there are no procedural bars to Norwood's claim.

¹Younger v. State, Del. Supr., 580 A.2d 552 (1990).

Norwood claims that his attorney was ineffective because she sent him a letter asking him if he wanted to file an appeal with the Supreme Court after, in Norwood's view, the 10 day period for taking such an appeal had expired. To prevail on this claim, Norwood must show that his attorney's conduct did not meet reasonable professional standards and that such conduct was prejudicial to him.² Norwood is mistaken about the time in which he had to file an appeal. He believed it was 10 days, when he actually had 30 days. Norwood was sentenced on June 16, 2000. He had 30 days from this date to file an appeal with the Supreme Court.³ On July 5, 2000, Norwood's attorney sent a letter to Norwood asking him if he wanted to file an appeal. Norwood indicated that he did not want to do so by checking "no" on the letter and returning it to his attorney. Norwood did this on July 5, 2000. There was still time for Norwood to file an appeal with the Supreme Court, but he did not wish to do so. Therefore, Norwood's argument is not supported by the facts and, as such, is clearly without merit.

CONCLUSION

For the reason set forth herein, Norwood's motion is denied.

IT IS SO ORDERED.


E. Scott Bradley

Dated: May 22, 2001

ESB:tl

cc: Prothonotary's Office
Ruth M. Smythe, Esquire
Melanie C. Withers, Esquire

²Strickland v. Washington, 466 U.S. 668 (1984).

³Supreme Court Rule 6(a)(ii)