

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

STATE OF DELAWARE )  
 )  
 V. ) DEF. I.D.: 0007020610  
 ) Cr. A. Nos.: 00-11-1484R1, 1485R1  
 BRUCE WRIGHT, ) and 1486R1  
 )  
 Defendant. )

**ORDER**

This 29<sup>th</sup> day of December, 2004, defendant, Bruce I. Wright, having filed a motion for postconviction relief pursuant to Delaware Superior Court Criminal Rule 61, and the Court having considered the motion, it appears to the Court that:

1) The defendant was charged by the Grand Jury with Murder in the First Degree, Possession of a Firearm During the Commission of a Felony and Possession of a Deadly Weapon or Ammunition By a Person Prohibited in connection with the July 17, 2000 shooting death of Jacobo Crucey. Prior to trial, the State announced its intention to seek the death penalty on the Murder in the First Degree charge. After a three week trial, on February 2, 2002, the jury returned verdicts of guilty on the lesser included charge of Murder in the Second Degree, and on the charges of Possession of a Firearm During the Commission of a Felony and Possession of a Deadly Weapon By a Person Prohibited. The Court sentenced Mr. Wright to thirty-

two years incarceration followed by decreasing levels of probation. The Delaware Supreme Court affirmed the convictions and sentences on March 12, 2003.

2) Mr. Wright has now filed his first motion for postconviction relief pursuant to Delaware Superior Court Criminal Rule 61. He asserts three grounds for relief, each alleging ineffective assistance of counsel: (1) counsel was ineffective for failing to object to the introduction of two firearms into evidence; (2) counsel was ineffective for failing to ensure that Mr. Wright was present during the out-of-court interview of a key witness; and (3) counsel was ineffective for failing to appeal the Court's decision to allow an out-of-court statement to be admitted during the trial. The Court first will address the standard of review on this motion for postconviction relief and then will address Mr. Wright's ineffective assistance of counsel claims *seriatim*.

3) Before addressing the merits of any postconviction relief claim, the Court must first determine whether Defendant's motion passes the procedural filters of Rule 61.<sup>1</sup> To protect the integrity of the procedural rules, the Court will not address the substantive aspects of the claims if Defendant's claims are procedurally barred.<sup>2</sup> Rule 61(i) imposes four procedural imperatives: 1) the motion must be filed

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<sup>1</sup>*Younger v. State*, 580 A.2d 552, 554 (Del. 1990)("It is well-settled that the Superior Court and this Court must address the procedural requirements of Rule 61 before considering the merits of the motion.").

<sup>2</sup>*Id.* at 554.

within three years of a final conviction; 2) any basis for relief must have been asserted previously in a postconviction proceeding; 3) any basis for relief must have been asserted at trial or on direct appeal as required by court rules; and 4) any basis for relief must not have been formerly adjudicated in any proceeding.<sup>3</sup> Under Rule 61(i)(5), a defendant may avoid these procedural imperatives if the claim is jurisdictional or is a "colorable claim that there was a miscarriage of justice because of a constitutional violation."<sup>4</sup> Rule 61(i)(4) further provides that any claim for postconviction relief may be summarily dismissed if "it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief."<sup>5</sup>

4) When a defendant raises a colorable claim of ineffective assistance of counsel, the procedural bars of Rule 61(i) are inapplicable because there may be "a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceeding."<sup>6</sup> In order to succeed on an ineffective assistance of counsel claim, the United States Supreme Court held in *Strickland v. Washington*,

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<sup>3</sup>DEL. SUPER. CT. CRIM. R. 61 (2004).

<sup>4</sup>DEL. SUPER. CT. CRIM. R. 61 (2004).

<sup>5</sup>DEL. SUPER. CT. CRIM. R. 61(i)(4)(2004).

<sup>6</sup>*See* Rule 61(i)(5). *See also State v. St. Louis*, 2004 WL 2153645, at \*3 (Del. Super.)("Since the Supreme Court generally will not hear a claim for ineffective assistance of counsel on direct appeal, the procedural default rules do not bar those assertions of errors premised on ineffective assistance of counsel.").

that a defendant must show both: (1) “that counsel’s representation fell below an objective standard of reasonableness,” and (2) “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.”<sup>7</sup> There is a strong presumption that the legal representation was professionally reasonable.<sup>8</sup> And the failure to prove either the cause or the prejudice prong will render the claim unsuccessful.<sup>9</sup> In such instances, the court need not address the other prong.<sup>10</sup> Initially, the accused bears the burden of showing that counsel’s inadequacy affected the outcome of the trial.<sup>11</sup> If this is shown, the burden shifts to the State to demonstrate that the outcome was not tainted.<sup>12</sup> If the accused fails to meet his initial burden, the claim fails.

5) Mr. Wright contends that his attorney rendered ineffective assistance when he failed to object to the introduction of two firearms during the trial. According to Mr. Wright, the State failed to present an adequate foundation linking the firearms to either himself or the crimes alleged in the indictment. The record confirms that counsel did not object when the State sought to introduce the two

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<sup>7</sup>*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>8</sup>*Flamer v. State*, 585 A.2d 736, 753-54 (Del. 1990)(citations omitted).

<sup>9</sup>*Strickland*, 466 U.S. at 697.

<sup>10</sup>*Id.*

<sup>11</sup>*Stevenson v. State*, 469 A.2d 797, 799 (Del. 1983)(citations omitted).

<sup>12</sup>*Id.*

firearms as evidence.<sup>13</sup> Nevertheless, Mr. Wright's criticism of his attorney is misplaced. Defense counsel had every reason not to object to the introduction of the two firearms.<sup>14</sup> Both firearms were seized from residences arguably under the control of individuals whom Mr. Wright claimed to be the actual perpetrator(s) of the shooting. By allowing the firearms to be introduced into evidence, defense counsel was able to cross-examine the lead investigating officer vigorously regarding the fact that other potential suspects had access to the firearms that the State contended were used to murder the victim.<sup>15</sup> This strategy was consistent with Mr. Wright's defense that he was not the shooter. Under these circumstances, Mr. Wright cannot demonstrate that counsel's performance in declining to object to the admission of the firearms either fell below an objective performance standard or prejudiced him in any way in the outcome of the trial. Indeed, the firearms became a key component of Mr. Wright's principal argument in defense of the charges.

6) Mr. Wright next contends that his attorney was ineffective by failing to ensure that Mr. Wright was present during the out-of-court interview of a detective who was unavailable to appear at trial. Mr. Wright contends that the failure to ensure

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<sup>13</sup>D.I. 48 at 44.

<sup>14</sup>Mr. Wright has not challenged the propriety of the Court's decision to admit the evidence and the Court declines to address this issue *sua sponte*.

<sup>15</sup>*See e.g.* D.I. 48 at 103-04.

that he was present during this interview constituted a violation of this Court's rules,<sup>16</sup> and his Sixth Amendment right to confront the witnesses who testify against him.

7) The interview to which Mr. Wright refers was an interview of Detective James Diana that occurred during the trial. The interview concerned Detective Diana's recollection of a witness interview he had conducted shortly before Mr. Wright's arrest. The witness had testified during trial that he invoked his right to remain silent during the course of the interview and that Detective Diana had ignored his request. Both prosecutors and defense counsel traveled to Detective Diana's house to interview him because he was physically unable to travel to the courthouse as a result of injuries sustained in an accident. Defense counsel was given the opportunity to question Detective Diana directly regarding his recollection of the events in question and, after completing the interview, defense counsel was satisfied that Detective Diana's testimony would be of no assistance to his client. Accordingly, defense counsel agreed that it was not necessary to secure Detective Diana's testimony for trial.

8) The extensive proffer of Detective Diana's expected testimony provided by defense counsel clearly supports defense counsel's determination that Detective

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<sup>16</sup>See Del. Super. Ct. Crim. R. 43 (“[the defendant shall be present] at every stage of the trial . . . . except as otherwise provided by this Rule”).

Diana's presence at trial would not have assisted Mr. Wright in any way.<sup>17</sup>

Moreover, Mr. Wright offers absolutely no authority to support the proposition that he was entitled to attend an out-of-court witness interview that was not a part of the trial proceedings. Mr. Wright was incarcerated throughout the trial as he was being held without bail on the capital murder charge in accordance with Delaware law.<sup>18</sup>

The Court cannot conclude that Mr. Wright's presence during the interview was either required or would have made any difference in the substance of the information Detective Diana provided to counsel. Simply stated, Mr. Wright's position on this issue is without any legal or factual basis.

9) Mr. Wright's last contention is that defense counsel was ineffective by failing to appeal the Court's admission of an out-of-court statement by a turncoat witnesses called by the State in its case-in-chief. Specifically, Mr. Wright contends that the statements were inadmissible because they were not voluntarily given.<sup>19</sup> The question of whether the witnesses' out-of-court statements were voluntarily given was the subject of extensive hearings during the trial which led the Court to issue a

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<sup>17</sup>D.I. 44 at 6-10.

<sup>18</sup>11 *Del. C.* § 2103 (a) ("A capital crime shall not be bailable, and a person so charged shall be held in custody without bail . . .").

<sup>19</sup>*See* 11 *Del. C.* § 3507 (a) ("in a criminal prosecution, the *voluntary* out-of-court statement of a witness who is present and subject to cross-examination may be used as affirmative evidence with substantive independent testimonial value.") (emphasis supplied).

lengthy written opinion summarizing its factual findings.<sup>20</sup> The Court reviewed the testimony offered during *voir dire* in connection with each of the witness' statements received under 11 *Del. C.* § 3507 and provided its reasons for determining that the State had demonstrated the voluntariness of the statements by a preponderance of the evidence given the "totality of the circumstances."<sup>21</sup>

10) When evaluating an ineffective assistance of counsel claim arising from an alleged failure to raise an issue on appeal, the Court first must examine the merits of the issue which the petitioner claims should have been appealed.<sup>22</sup> In this case, the Court carefully evaluated the voluntariness of the statements and ultimately determined that they were admissible under Section 3507. The Court cannot conclude on this record that a viable appellate issue was implicated by this fact-intensive determination. It cannot be said, then, that defense counsel's failure to raise this issue on appeal constituted a departure from reasonable standards of professionalism or competency. Moreover, given the other eyewitness testimony offered at trial, it cannot be said that Mr. Wright was denied a fair trial by virtue of

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<sup>20</sup>See D.I. 28.

<sup>21</sup>*Id. Accord Johnson v. State*, 801 A.2d 10 (Del. 2002)(articulating a "totality of the circumstances" standard for reviewing the voluntariness of statements received under 11 *Del. C.* § 3507).

<sup>22</sup>See *State v. Archie*, 2002 Del. Super. LEXIS 196, at \*18; *Hull v. Kyler*, 190 F. 3d 88, 105 (3d Cir. 1999).



the admission of the out-of-court statements.<sup>23</sup>

11) Based on the foregoing, defendant's motion for postconviction relief must be **DENIED**.

**IT IS SO ORDERED.**

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Judge Joseph R. Slights, III

Original to Prothonotary

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<sup>23</sup>See *Barnes v. State*, 858 A.2d 945, 946 (Del. 2004).