

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LLOYD L. ANDERSON,	§
	§
Defendant Below-	§ No. 97, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN92-12-0523, 0524
Plaintiff Below-	§
Appellee.	§

Submitted: August 9, 2002

Decided: August 30, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 30th day of August 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Lloyd L. Anderson, filed an appeal from the Superior Court's January 31, 2002 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Anderson claims that: a) his trial counsel provided ineffective assistance by "opening the door" to the presentation of evidence of

prior bad acts; b) his trial counsel provided ineffective assistance by failing to move to exclude evidence from a previous trial under the principle of collateral estoppel; and c) the Superior Court abused its discretion by denying his request for a trial transcript at State expense. To the extent Anderson has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court.¹

(3) In February 1998, Anderson was tried on charges of Trafficking in Marijuana, Possession with Intent to Deliver Marijuana, Maintaining a Vehicle for the Distribution or Use of Marijuana and Conspiracy in the Second Degree. He was acquitted by a Superior Court jury of the latter two charges and a mistrial was declared as to the former two charges. Later in 1998, Anderson was retried on the former two charges, was convicted and was sentenced to a period of

¹*Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his motion for postconviction relief filed in the Superior Court, Anderson also argued that his trial counsel refused to interview a witness whose testimony would have benefitted Anderson's case and his appellate counsel failed to raise the issue of trial counsel's ineffective assistance.

incarceration. This Court affirmed Anderson's convictions and sentences on direct appeal.²

²*Anderson v. State*, Del. Supr., No. 364, 1999, Walsh, J. (Mar. 7, 2000).

(4) Anderson's first claim regarding the presentation of evidence of prior bad acts is barred as formerly adjudicated,³ since the claim was presented and decided against Anderson in his direct appeal to this Court. Anderson's attempt to re-litigate this claim as an ineffective assistance of counsel claim as a means to avoid the procedural bar is unavailing.⁴ In order to succeed on an ineffective assistance of counsel claim, Anderson must demonstrate not only that his counsel's representation fell below an objective standard of reasonableness, but that any alleged errors resulted in prejudice to him.⁵ Anderson can do neither in this case, since this Court ruled previously in his direct appeal that the Superior Court properly admitted the evidence.⁶

³SUPER. CT. CRIM. R. 61(i) (4).

⁴Id.

⁵*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁶D. R. E. 404(b).

(5) Also procedurally barred is Anderson's claim that at his second trial his counsel provided ineffective assistance by failing to object to the presentation of evidence from his first trial under the principle of collateral estoppel.⁷ Moreover, Anderson's attempt to present this claim as an ineffective assistance of counsel claim as a means to avoid the procedural bar is unavailing.⁸ Anderson's acquittal on the charges of maintaining a vehicle and conspiracy in the first trial did not bar a second trial on the charges of trafficking and intent to deliver and, furthermore, did not bar the use of evidence developed in the first trial against him in the second trial.⁹ Thus, Anderson was not prejudiced by the lack of an objection to such evidence.

(6) Anderson's third claim is also without merit. Absent a showing that there is some legal or factual basis for relief and that there is a particularized need for a transcript, the Superior Court is within its discretion to deny a transcript at State expense.¹⁰

⁷SUPER. CT. CRIM. R. 61(i) (3).

⁸SUPER. CT. CRIM. R. 61(i) (3) (A) and (B); SUPER. CT. CRIM. R. 61(i) (5).

⁹*State v. Sheeran*, 441 A.2d 235, 243 (Del. Super. 1981), *aff'd.*, 526 A.2d 886 (Del. 1987).

¹⁰*U.S. v. MacCollum*, 426 U.S. 317, 330 (1976); *Bratcher v. State*, Del. Supr., No. 331, 1998, Veasey, C.J., (Nov. 10, 1998).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/ Joseph T. Walsh
Justice