

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHNNY LOPEZ,	§
	§ No. 77, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0303004588
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 26, 2008

Decided: March 28, 2008

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 28th day of March 2008, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Johnny Lopez, filed an appeal from the Superior Court’s January 25, 2008 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) In November 2003, Lopez was found guilty by a Superior Court jury of Trafficking in Cocaine, Possession With Intent to Deliver Cocaine, Maintaining a Dwelling for Keeping Controlled Substances, and Possession of Drug Paraphernalia. He was sentenced to a total of 18 years of Level V incarceration, to be followed by probation. Lopez' convictions and sentences were affirmed by this Court on direct appeal.¹

(3) In this appeal from the Superior Court's denial of his motion for postconviction relief, Lopez claims that a) the warrant authorizing the search of his residence was defective and the search was unconstitutional; b) there was insufficient evidence presented at trial to support the charge of Possession With Intent to Deliver Cocaine; c) his request to represent himself at trial was not properly considered by the trial judge; and d) his attorney provided ineffective assistance by failing to submit legal memoranda in support of his motion to suppress and failing to call Lopez' probation officer as a witness at trial.

(4) When considering a postconviction motion pursuant to Rule 61, the Superior Court must review whether the procedural requirements of the rule have been met before reaching the merits of the claims.² Lopez' first claim of a defective search warrant and unconstitutional search was fully litigated at a pre-trial suppression hearing and on direct appeal. His third claim concerning his

¹ *Lopez v. State*, 861 A.2d 1245 (Del. 2004).

² *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

request to proceed pro se at trial was reviewed by this Court on direct appeal. Therefore, those claims are procedurally barred as formerly adjudicated.³ Moreover, Lopez has failed to demonstrate why reconsideration of the claims is warranted in the interest of justice.⁴ Lopez' second claim of insufficient evidence to support the charge of possession with intent to deliver was not raised at trial or on direct appeal. As such, the claim is procedurally defaulted.⁵ Moreover, Lopez has failed to overcome the procedural default by demonstrating either cause and prejudice⁶ or a colorable claim of a constitutional violation.⁷

(5) Lopez' final claim is that his attorney provided ineffective assistance at trial. In order to prevail on a claim of ineffective assistance of counsel, the defendant must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁸ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁹ The defendant must make concrete allegations of

³ Super. Ct. Crim. R. 61(i) (4).

⁴ Id.

⁵ Super. Ct. Crim. R. 61(i) (3).

⁶ Super. Ct. Crim. R. 61(i) (3) (A) and (B).

⁷ Super. Ct. Crim. R. 61(i) (5).

⁸ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁹ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

ineffective assistance, and substantiate them, or risk summary dismissal.¹⁰ In the absence of any evidence of error on the part of Lopez' counsel that resulted in prejudice to him, we conclude that this claim also is unavailing.

(6) It is manifest on the face of the appellant's opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

¹⁰ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).