

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JASON HAINEY,	§
	§ No. 538, 2007
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. 0306015699
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 28, 2008  
Decided: March 31, 2008

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

**ORDER**

This 31<sup>st</sup> day of March 2008, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Jason Hainey, filed an appeal from the Superior Court’s September 24, 2007 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 February 2004, a Superior Court jury found Hainey guilty of two counts of Murder in the First Degree, Attempted Robbery in the First Degree, and two counts of Possession of a Firearm During the Commission of a Felony. After the penalty phase hearing, the jury recommended a life

sentence by a vote of 7-5. The Superior Court sentenced Hainey to life in prison. This Court affirmed Hainey's convictions and sentences on direct appeal.<sup>1</sup>

(3) In this appeal from the Superior Court's denial of his postconviction motion, Hainey claims that a) the prosecutor used perjured testimony and misrepresented the evidence, depriving him of a fair trial; b) the judge improperly permitted a gun to be admitted into evidence, depriving him of a fair trial; c) there was insufficient evidence to support the jury's verdict; d) his trial counsel provided ineffective assistance by failing to interview and subpoena a key witness, file a motion for judgment of acquittal, and properly present the facts at trial; and e) his appellate counsel provided ineffective assistance by failing to assert the appropriate claims on appeal. To the extent that Hainey 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.<sup>2</sup>

(4) When considering a postconviction motion pursuant to Rule 61, the Superior Court must first determine whether the procedural requirements

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<sup>1</sup> *Hainey v. State*, 878 A.2d 430 (Del. 2005).

<sup>2</sup> *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his postconviction motion, Hainey also argued that: the trial judge abused his discretion by excluding evidence, admitting prejudicial testimony, and failing to properly instruct the jury; and his right to confront his accuser was violated when he was not allowed to cross-examine the author of the police report.

of the rule have been met before reaching the merits of the claims.<sup>3</sup> The record reflects that Hainey's first claim of prosecutorial misconduct was never presented at trial or on direct appeal. Therefore, the claim is procedurally defaulted unless Hainey can demonstrate either cause and prejudice<sup>4</sup> or a colorable claim of a constitutional violation.<sup>5</sup> In the absence of any such evidence, we conclude that Hainey's first claim is without merit. The record also reflects that Hainey's second and third claims of improper evidentiary rulings and insufficiency of the evidence were previously adjudicated, at trial and in his direct appeal. These claims are procedurally barred unless Hainey can demonstrate that reconsideration of the claims is warranted in the interest of justice.<sup>6</sup> In the absence of any such evidence, we conclude that these claims, too, are without merit.

(5) Hainey's two final claims are that his trial counsel and his appellate counsel provided ineffective assistance. In order to prevail on a claim of ineffective assistance of counsel, a 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

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<sup>3</sup> *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

<sup>4</sup> Super. Ct. Crim. R. 61(i) (3) (A) and (B).

<sup>5</sup> Super. Ct. Crim. R. 61(i) (5).

<sup>6</sup> Super. Ct. Crim. R. 61(i) (4).

been different.<sup>7</sup> Although not insurmountable, the *Strickland* standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”<sup>8</sup> The defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.<sup>9</sup> Because Hainey has failed to demonstrate that either his trial counsel or his appellate counsel committed errors resulting in prejudice to him, we conclude that his claims of ineffective assistance are also unavailing.

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

BY THE COURT:

/s/Henry duPont Ridgely  
Justice

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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 (Del. 1990).

<sup>9</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).