

IN THE SUPREME COURT OF THE STATE OF DELAWARE

OTTO GIBBS,	§
	§
Defendant Below-	§ No. 46, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN96-05-0521R1
Plaintiff Below-	§
Appellee.	§

Submitted: July 26, 2002

Decided: August 28, 2002

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

ORDER

This 28th 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, Otto Gibbs, filed an appeal from the January 7, 2002 order of the Superior Court 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 his appeal, Gibbs claims that the Superior Court committed legal error and abused its discretion by: a) summarily dismissing as procedurally

defaulted his claim that he was denied access to an exculpatory DNA report at trial; and b) summarily dismissing his claim that his trial counsel provided ineffective assistance by failing to properly investigate his case and failing to properly cross-examine the complaining witness.

(3) In September 1997, a Superior Court jury convicted Gibbs of Unlawful Sexual Intercourse in the Second Degree. He was sentenced to 20 years incarceration at Level V, to be suspended after 15 years for 5 years at decreasing levels of probation.

(4) There is no merit to Gibbs' claim that it was improper for the Superior Court to summarily dismiss his claim that he was denied access to an exculpatory DNA report. The Superior Court correctly determined that the claim was procedurally defaulted because it had not been asserted in Gibbs' direct appeal.¹ The Superior Court also correctly determined that there was no basis in the record for excusing the procedural default,² since the report not only was given to Gibbs' counsel prior to trial, but was inculpatory. Finally, it was within the discretion of the Superior Court to determine whether a hearing on

¹*Gibbs v. State*, Del. Supr., No. 480, 1997, Veasey, C.J. (Nov. 19, 1998); SUPER. CT. CRIM. R. 61(i) (3).

²SUPER. CT. CRIM. R. 61(i) (3) (A) and (B); SUPER. CT. CRIM. R 61(i) (5).

Gibbs' postconviction motion was warranted.³ There is no evidence that the Superior Court abused its discretion in determining that Gibbs' claim should be dismissed without a hearing.

(5) Gibbs' claim of ineffective assistance of counsel is likewise unavailing. In order to prevail on a claim of ineffective assistance of counsel, Gibbs must show that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁴ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁵ Gibbs has failed to demonstrate that any action taken by his counsel resulted in prejudice to him. There was, therefore, no abuse

³SUPER. CT. CRIM. R. 61(h).

⁴*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁵*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

of discretion in the Superior Court's summary dismissal of his claim of ineffective assistance of counsel.

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

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice