

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAZAAR L. CHATTIN,	§
	§ No. 106, 2012
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§
STATE OF DELAWARE,	§ Cr. ID No. 0811000883
	§
Plaintiff Below,	§
Appellee.	§

Submitted: September 21, 2012
Decided: November 16, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 16th day of November 2012, upon consideration of the briefs of the parties and the record on appeal, it appears to the Court that:

(1) The defendant-appellant, Lazaar Chattin, appeals from the Superior Court’s February 14, 2012 order adopting the January 6, 2012 report and recommendation of the Superior Court Commissioner¹ that his first Superior Court Criminal Rule 61 motion for postconviction relief be denied. We find no merit to the appeal and, accordingly, affirm.

¹ See DEL. CODE ANN. tit. 10, § 512(b); Super. Ct. Crim. R. 62.

(2) In April 2010, after a jury trial, Chattin was found guilty of Attempted Murder in the First Degree, Reckless Endangering in the First Degree, Theft of a Firearm, and five additional weapons offenses. He was sentenced to 44 years of Level V incarceration, to be suspended after 25 years for decreasing levels of supervision. This Court affirmed Chattin's convictions on direct appeal.²

(3) The charges against Chattin arose from two separate incidents in Newark, Delaware. The first incident involved Chattin's theft of a handgun from the home of an acquaintance. The acquaintance reported the theft to the police and identified Chattin as the perpetrator. The second incident, which occurred approximately one week later, involved another acquaintance who refused to tell Chattin about the first acquaintance-victim's whereabouts. Chattin became angry and shot several times at the second acquaintance. The handgun used in the shooting was the previously-stolen handgun. An ammunition box found near the incident site also yielded a fingerprint later identified as Chattin's. Finally, the victim of the shooting identified Chattin as the shooter.

(4) In this appeal, Chattin claims that his trial counsel provided ineffective assistance by failing to: (a) move for judgment of acquittal or

² *Chattin v. State*, 16 A.3d 937 (Del. 2011).

argue that his acquaintance, and not he, was the shooter, (b) have an expert test Chattin's clothing for gunpowder residue, (c) move to sever the charges against him, (d) obtain the victim's medical records and subpoena the medical personnel who provided care to the victim to testify at trial, and (e) notify Chattin of the time limitation on a motion for sentence reduction.

(5) To prevail on an ineffective assistance of counsel claim, 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 been different.³ Although not insurmountable, the *Strickland* standard is highly demanding and creates a strong presumption that an attorney's representation was professionally reasonable.⁴ The defendant must make and substantiate concrete allegations of actual prejudice in an ineffective assistance of counsel claim, or risk summary dismissal.⁵

(6) Chattin's first claim's that his counsel failed to move for judgment of acquittal or to argue that his companion, and not he, was the

³ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁴ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁵ *See Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

shooter. Chattin's ineffective assistance claim is more properly viewed as a claim of insufficient evidence, which this Court previously addressed in Chattin's direct appeal. As such, the claim is procedurally barred as previously adjudicated.⁶ This Court will not entertain a claim that has been previously adjudicated merely because it has been refined or restated.⁷ To the extent that Chattin claims that his counsel failed to ask certain questions or to make certain objections at trial, any such claim fails for lack of specificity. Therefore, Chattin's first claim is without merit.

(7) Chattin's second claim is that his counsel failed to hire an expert to test his clothing for gunpowder residue. The evidence presented at trial was that the police did not test Chattin's clothing for gunpowder residue because those tests tended to yield unreliable results. Assuming that Chattin's counsel could have located an expert willing to testify to the accuracy of such testing, and assuming that there was no actual gunpowder residue on Chattin's clothing, Chattin has failed to demonstrate that that would have been sufficient to alter the outcome of his trial, given the overwhelming other evidence supporting the jury's guilty verdict. Because

⁶ See Super. Ct. Crim. R. 61(i)(4).

⁷ *Skinner v. State*, 607 A.2d 1170, 1172 (Del. 1992) (internal quotations and citations omitted).

Chattin's second claim fails *Strickland's* prejudice prong, we conclude that his second claim is also without merit.

(8) Chattin's third claim is that his counsel failed to move to sever the charges against him. The two incidents that led to the charges against Chattin were "of the same or similar character" and represented "two or more acts or transactions connected together or constituting parts of a common scheme or plan."⁸ Specifically, the evidence presented at trial reflected that the theft provided the motive for the shooting. Therefore, the charges against Chattin were properly joined in the same Superior Court proceeding,⁹ and Chattin's third claim is without merit.

(9) Chattin's fourth claim is that his counsel failed to obtain the victim's medical records and to subpoena the medical personnel who cared for the victim in order to establish that the victim's injuries were not serious, or that the medical personnel may have identified someone else as the shooter. Given the other evidence supporting the jury's guilty verdict, Chattin has failed to demonstrate that his attorney's failure to obtain that

⁸ Super. Ct. Crim. R. 8(a).

⁹ See *Wood v. State*, 956 A.2d 1228, 1231 (Del. 2008) (holding that "a crucial factor to be considered in making a final determination on [a motion to sever] should be whether the evidence of one crime would be admissible in the trial of the other crime").

information resulted in any prejudice to him. Accordingly, Chattin's fourth claim is without merit.

(10) Chattin's fifth claim is that his counsel failed to advise him of the time limitation for filing a motion for sentence reduction.¹⁰ Again, Chattin has failed to demonstrate that even if his counsel committed legal error, that Chattin was prejudiced as a result. There is no evidence of any error in the Superior Court's sentencing order, or that any good faith basis existed for a sentence reduction. Therefore, Chattin's fifth claim is without merit.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹⁰ See Super. Ct. Crim. R. 35(b).