

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PATRICK D. EVERETT,	§
	§
Defendant Below-	§ No. 656, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0602023552
Plaintiff Below-	§
Appellee.	§

Submitted: June 6, 2008  
Decided: September 12, 2008

Before **HOLLAND, JACOBS** and **RIDGLEY**, Justices.

**ORDER**

This 12<sup>th</sup> day of September 2008, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Patrick Everett, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. Everett's postconviction motion alleged three claims of ineffective assistance of counsel. We find no merit to Everett's appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Everett was convicted following a bench trial of possession of a deadly weapon by a person prohibited, possession of ammunition by a person prohibited, and possession of a

weapon with a removed, obliterated, or altered serial number. The Superior Court sentenced him to a total period of twelve years at Level V incarceration suspended after serving a five year minimum mandatory term, to be followed by probation. In his direct appeal, Everett argued that his probation officer's administrative search of his car violated his Fourth Amendment rights under the Delaware and United States Constitutions. We rejected that argument and affirmed Everett's convictions.<sup>1</sup> Thereafter, Everett moved for postconviction relief contending that his counsel's performance was ineffective because counsel failed to: (i) argue in his motion to suppress that the police had unlawfully detained him prior to the search of his car; (ii) advance a "stalking horse" argument on direct appeal; and (iii) have the pre-search checklist or administrative warrant produced at the suppression hearing and trial. The Superior Court rejected Everett's claims. This appeal followed.

(3) We review the Superior Court's denial of postconviction relief for abuse of discretion.<sup>2</sup> To prevail on a claim of ineffective assistance of counsel, a defendant must establish that (i) his counsel's representation fell below an objective standard of reasonableness; and (ii) but for counsel's

---

<sup>1</sup> *Everett v. State*, 2007 WL 1850906 (Del. June 28, 2007).

<sup>2</sup> *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

unprofessional errors, the result of the trial would have been different.<sup>3</sup> The defendant must set forth and substantiate concrete allegations of actual prejudice.<sup>4</sup> Moreover, there is a “strong presumption” that counsel’s representation was professionally reasonable.<sup>5</sup>

(4) Everett’s first claim is that his counsel erred in failing to argue that his initial detention by the police was unlawful. We find no merit to Everett’s claim because we find no error by trial counsel. As the Superior Court noted, the police interviewed a witness who accused Everett of striking her in the face. After giving the police Everett’s name and birthdate, police discovered that Everett was on probation and that he might be in possession of a firearm. Section 1902 of Title 11 of the Delaware Code provides that police officers may detain an individual for up to two hours if there is “reasonable ground” to suspect the individual has or is about to commit a crime.<sup>6</sup> Given the witness’ identification of Everett as her assailant, we conclude that the police had reasonable ground to believe that Everett had committed an assault and was a person prohibited in possession

---

<sup>3</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

<sup>4</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

<sup>5</sup> *Id.* at 689.

<sup>6</sup> 11 Del. C. § 1902(a) (2007).

of a firearm. We find no error in the Superior Court’s rejection of Everett’s first claim.

(5) Everett’s next claim is that his attorney erred by failing to advance a “stalking horse” argument on appeal.<sup>7</sup> Everett’s contention is factually incorrect, however. The sole argument raised by Everett on appeal was that his probation officer “acted in contravention of [probation procedures] by performing a search ‘solely on the basis of a request from law enforcement officials.’”<sup>8</sup> This is the so-called “stalking horse” argument. We rejected this claim on appeal because it was factually unsupported by the record. Accordingly, we find no merit to Everett’s second claim for postconviction relief.

(6) Everett’s final contention is that his counsel erred by failing to have the pre-search checklist or administrative search warrant produced at the suppression hearing or at trial. Even assuming without deciding that counsel should have requested production of the pre-search checklist and administrative warrant, Everett has neither alleged nor demonstrated how either document would have changed the outcome of his trial. In the

---

<sup>7</sup> See *United States v. Richardson*, 849 F.2d 439, 441 (9<sup>th</sup> Cir. 1988) (A probation officer acts as a “stalking horse” if the officer “conducts a parole or probation search on prior request of and in concert with law enforcement officers.”).

<sup>8</sup> *Everett v. State*, 2007 WL 1850906 (Del. Jun. 28, 2007).

absence of any allegation of prejudice, we find no merit to Everett's argument.

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice