IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES H. ROBINSON, JR.,	§	
	§	
Defendant Below-	§	No. 247, 2002
Appellant,	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr.A. Nos. IN98-10-0804;
Plaintiff Below-	§	0747; 0711
Appellee.	§	IN98-11-1297

Submitted: February 7, 2003
Decided: April 10, 2003

Before **WALSH**, **HOLLAND** and **STEELE**, Justices

O R D E R

This 10th day of March 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Charles H. Robinson, Jr., filed an appeal from the Superior Court's April 11, 2002 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) On May 23, 2000, Robinson pleaded guilty to Assault in the First Degree, Possession of a Deadly Weapon During the Commission of a

Felony, Aggravated Menacing and Assault in the Third Degree.[1] He was sentenced to a total of 17 years incarceration at Level V, to be suspended after 11 years for 6 years of decreasing levels of probation. Robinson did not file a direct appeal from his convictions and sentences.

(3) Robinson previously had rejected plea offers made by the State on May 24, 1999 and July 12, 1999. At a hearing on July 12, 1999, the Superior Court ordered that the case would go to trial unless a plea agreement were entered by August 16, 1999.[2] The Superior Court docket reflects no activity between July 12, 1999 and September 28, 1999, when Robinson's counsel filed a motion for bail reduction. On October 28, 1999, Robinson filed a pro se motion to dismiss for failure to provide a speedy trial.[3]

(4) In his appeal, Robinson claims that the Superior Court abused its discretion by: a) denying his claim that his public defender provided ineffective assistance of counsel; and b) granting only in part his request for

[1]Robinson pleaded guilty to four of eighteen charges against him just as the trial was beginning.

[2]The transcript of the hearing held on that date reflects that Robinson wanted a 3-year sentence, but the State would not offer anything less than 5½ years.

[3]The motion was sent to Robinson's public defender who, in turn, re-filed it.

transcripts for purposes of his appeal.[4] To the extent Robinson has not argued other claims that were raised previously, those grounds are deemed waived and will not be addressed by this Court.[5]

(5) Robinson's ineffective assistance of counsel claim centers around his contention that he wrote his public defender two letters, the first dated July 26, 1999 and the second dated August 1, 1999, informing him that the State's plea offer of 5½ years at Level V was acceptable. Robinson's public defender disputed this contention in his affidavit filed in response to Robinson's Rule 61 motion.[6] Because the Superior Court was not able to resolve the issue on the basis of the paper record, an evidentiary hearing was held at which both Robinson and his former public defender testified.[7]

(6) At the hearing, the public defender testified that he did not receive the two letters in question and became aware of them only when

[4]Robinson requested transcripts of the July 12, 1999 case review, the May 23, 2000 plea colloquy, his private counsel's March 22, 1999 motion to withdraw, trial testimony from May 23, 2000, the August 18, 2000 sentencing, and oral argument from the March 20, 2002 hearing. The Superior Court granted the motion as to the first three requests only.

[5]*Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). Robinson also argued in his postconviction motion in the Superior Court that his private counsel provided ineffective assistance.

[6]SUPR. CT. CRIM. R. 61(g).

[7]SUPR. CT. CRIM. R. 61(h).

Disciplinary Counsel sent him a copy of a complaint submitted by Robinson with copies of the letters attached. The public defender further testified that Robinson did send him several letters in 1999, but that the letters dealt with preparation for trial and that, even on May 23, 2000 when Robinson entered his guilty plea, there was no mention of the State's previous plea offer or the two letters.

(7) Following this testimony, the Superior Court examined the record, focusing on docket number 63, which consisted of three letters stapled together. The first letter, which was addressed to the Prothonotary and dated December 3, 2000, stated that the two attached letters should be "on file for the future." The Superior Court noted that the attached letters were not the same as the letters Robinson had used to support his Rule 61 motion. The Superior Court also noted the fact that Robinson had moved to dismiss his public defender in March 2000 and subsequently complained about him to Public Defender Lawrence Sullivan, and yet never mentioned the two letters. Considering all the evidence presented at the hearing, the Superior Court concluded that both the letters sent to the Prothonotary and the letters attached to Robinson's Rule 61 motion were a sham and denied Robinson's claim of ineffective assistance of counsel.

(8) In order to prevail on his claim of ineffective assistance of counsel, Robinson 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.[8] Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."[9]

(9) There is no evidence in this record of either error on the part of Robinson's public defender or prejudice resulting from any alleged error. Moreover, there is no evidence of any error or abuse of discretion on the part of the Superior Court judge in denying Robinson's Rule 61 claim of ineffective assistance of counsel as groundless and based upon sham evidence.

(10) There is also no merit to Robinson's claim that the Superior Court abused its discretion by only partially granting his motion for transcripts. The Superior Court has discretion to determine if transcripts are required to decide a motion for postconviction relief.[10] Moreover, absent a

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

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

[10] SUPER. CT. CRIM. R. 61(d) (3).

showing that there is some legal or factual basis for relief and that there is a particularized need for a transcript on appeal, the Superior Court is within its discretion to deny a transcript at State expense.[11] In this case, the Superior Court found that there was no demonstrable need for two of the requested transcripts.[12] We find no abuse of discretion on the part of the Superior Court in so ruling.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

[11] *U.S. v. MacCollum*, 426 U.S. 317, 330 (1976).

[12] One of the three requests denied by the Superior Court was for a trial transcript that did not exist.