

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMARR L. CAMPBELL,	§
	§
Defendant Below-	§ No. 141, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 9912011058
Plaintiff Below-	§
Appellee.	§

Submitted: April 13, 2009

Decided: June 2, 2009

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

ORDER

This 2nd day of June 2009, upon consideration of appellant's opening brief and his motion for appointment of counsel, as well as the State's motion to affirm and the record below, it appears to the Court that:

(1) The appellant, Jamarr Campbell, filed this appeal from the Superior Court's denial of his fifth motion for postconviction relief. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Campbell's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Campbell in March 2001 of possession of cocaine with intent to deliver and

possession of cocaine within 300 feet of a park. This Court affirmed on direct appeal.¹ Thereafter, Campbell filed multiple unsuccessful petitions for postconviction and habeas corpus relief. In October 2008, Campbell filed his fifth motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The Superior Court denied the motion. This appeal followed.

(3) Campbell raises four issues on appeal. First, he contends that his trial counsel provided ineffective assistance of counsel. Second, Campbell contends that the Superior Court erred at his trial by failing to instruct the jury on the lesser included offense of simple possession. Third, Campbell argues that the State committed a *Brady*² violation by failing to provide him with a copy of police reports. Finally, Campbell contends that his convictions are based on perjured testimony.

(4) We review the Superior Court's denial of a postconviction motion under Rule 61 for abuse of discretion.³ The Court first must consider the procedural requirements of Rule 61 before addressing any substantive issues.⁴ Rule 61(i)(4) bars litigation of any claim that previously was

¹ *Campbell v. State*, 2002 WL 1472283 (Del. June 27, 2002).

² *Brady v. Maryland*, 373 U.S. 83 (1963).

³ *Outten v. State*, 720 A.2d 547, 551 (Del. 1998).

⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

adjudicated unless reconsideration of the claim is warranted in the interest of justice. In this case, Campbell's claims of ineffective assistance of counsel and perjured testimony have both been raised and rejected in prior proceedings. Reconsideration of these previously adjudicated claims is not warranted in the interest of justice.

(5) Campbell's contention that the trial judge erred in failing to instruct the jury on the lesser included charge of simple possession has no merit because neither the prosecution nor the defense requested such an instruction. In the absence of such a request, the trial judge had no authority to provide such an instruction *sua sponte*.⁵ Accordingly, we reject this argument.

(6) Campbell's final argument is that the State committed a *Brady*⁶ violation because it failed to provide him with any information identifying the woman with whom Campbell was seen when police arrested him. This argument, however, is contradicted by the record because the police report containing the information was provided by the State to defense counsel prior to the trial. Accordingly, we find no merit to this claim.

⁵ *Wiggins v. State*, 902 A.2d 1110, 1112-13 (Del. 2006).

⁶ *Brady v. Maryland*, 373 U.S. 83 (1963).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. Campbell's motion for the appointment of counsel is DENIED.

BY THE COURT:

/s/ Carolyn Berger
Justice