

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SADIKI GARDEN,	§
	§
Defendant Below-	§ No. 45, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 9912015068
Plaintiff Below-	§
Appellee.	§

Submitted: July 10, 2009
Decided: September 4, 2009

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 4th day of September 2009, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Sadiki Garden, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. We conclude that the record before us is insufficient to conduct an adequate review of the merits of Garden's appeal. Accordingly, we remand this matter to the Superior Court for further proceedings. Jurisdiction will be not be retained.

(2) The record reflects that a Superior Court jury convicted Garden, among other things, of first degree intentional murder and first degree felony

murder. After a penalty hearing, the jury found the existence of a statutory aggravating circumstance but voted 10-2 in favor of a life sentence on the intentional murder count and voted 9-3 in favor of a life sentence on the felony murder count. The Superior Court judge imposed a death sentence for each of the two murder convictions.¹

(3) After a post-trial hearing, Garden's motions for a new trial and for recusal of the trial judge were both denied. On appeal, this Court affirmed Garden's convictions but remanded the case for reconsideration of the sentence on the murder convictions.² On remand, the trial judge re-imposed the death sentences.³ On appeal, this Court reversed the death sentences and directed the Superior Court to impose a life sentence.⁴ After the Superior Court resentenced Garden to life in prison without the possibility of probation or parole, Garden filed motions requesting the preparation of transcript and the appointment of counsel to assist him in pursuing a petition for postconviction relief under Superior Court Criminal Rule 61. The Superior Court denied both motions. Nearly two years later, on December 18, 2006, Garden filed his first motion for postconviction

¹ *State v. Garden*, 792 A.2d 1025 (Del. Super. 2001).

² *Garden v. State*, 815 A.2d 327 (Del. 2003).

³ *State v. Garden*, 831 A.2d 352 (Del. Super. 2003).

⁴ *Garden v. State*, 844 A.2d 311 (Del. 2004).

relief *pro se*. After receiving a response from the State in April 2007, the Superior Court denied Garden's motion on January 15, 2009. This appeal followed.

(4) Garden raises six issues in his opening brief on appeal. First, he contends that the Superior Court abused its discretion in ruling on his postconviction claims of ineffective assistance of counsel without first obtaining a response to the allegations from his former counsel. Second, Garden asserts that his trial counsel was ineffective for failing to object to allegedly biased comments made by the trial judge or to raise the issue of judicial bias concerning these remarks on direct appeal. Third, Garden asserts that his trial counsel was ineffective for failing to pursue a pretrial motion to suppress. Fourth, Garden argues that his trial counsel was ineffective for failing to properly impeach his codefendant, Christopher Johnson, on cross-examination concerning Johnson's allegedly false and contradictory testimony. Fifth, Garden contends that trial counsel was ineffective for failing to argue a violation of Garden's constitutional rights under *Miranda v. Arizona*.⁵ Finally, Garden asserts that his trial counsel was ineffective for prohibiting Garden from testifying in his own defense.

⁵ *Miranda v. Arizona*, 384 U.S. 436 (1966).

(5) In its answering brief on appeal, the State, among other things, contends that the Superior Court did not abuse its discretion by failing to obtain defense counsel's response to Garden's allegations of ineffectiveness because there is no merit to his allegations.

(6) While ultimately the Court may find no merit on appeal to Garden's allegations of ineffectiveness, we nonetheless conclude that the interests of justice require a fuller expansion of the record. As this Court previously has noted, "a defendant's first and best opportunity to raise an ineffective assistance of counsel claim is in a timely motion for postconviction relief."⁶ If the substance of any arguable claim is not fully considered in this first postconviction proceeding, Garden may be procedurally barred from ever raising the issues again.⁷

(7) Under these circumstances and in the interests of justice, we therefore remand to the Superior Court so that Garden, with the assistance of appointed counsel, may have the opportunity to expand on the allegations raised in this appeal and so defense counsel, as well as the State, may have the opportunity to address Garden's allegations.

⁶ *Horne v. State*, 887 A.2d 973, 974 (Del. 2005).

⁷ See Del. Super. Ct. Crim. R. 61(i)(2).

(8) We have no doubt that the trial judge could reconsider this matter fairly and impartially. Given the nature of Garden's arguments, the need for appointed counsel to review the earlier proceedings, and the impending expiration of the trial judge's term, we conclude, in the interests of justice, that this matter should be assigned to a different Superior Court judge for reconsideration of Garden's postconviction motion.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's opinion, dated January 15, 2009, is hereby VACATED. This matter is REMANDED to the Superior Court for reassignment by the President Judge and the appointment of counsel to represent Garden in pursuing a new postconviction motion. After receiving responses from former defense counsel and the State, the Superior Court may hold a hearing, in its discretion. Priority should be given to scheduling this case upon remand. Jurisdiction is not retained.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice