

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TERRENCE ANDERSON,	§	
	§	No. 616, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0510000049
Appellee.	§	

Submitted: June 24, 2009  
Decided: September 22, 2009

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

**ORDER**

This 22<sup>nd</sup> day of September 2009, upon consideration of the briefs of the parties and the Superior Court record, it appears to the Court that:

(1) The appellant, Terrence Anderson, filed an appeal from the Superior Court's opinion and order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 and related motions. We conclude that there is no merit to the appeal. Accordingly, we affirm for the reasons stated by the Superior Court in its decisions dated December 4, 2008.

(2) Following a jury trial in June 2006, Anderson was convicted of Assault in the First Degree as a lesser-included offense of Attempted

Murder, Possession of a Firearm During the Commission of a Felony and Possession of a Deadly Weapon by a Person Prohibited. The Superior Court sentenced Anderson to fifteen years at Level V incarceration suspended after ten years mandatory for work release and probation. On direct appeal, this Court affirmed.<sup>1</sup>

(3) In May 2008, Anderson filed a motion for postconviction relief alleging that his former defense counsel was ineffective at trial and on direct appeal. Anderson alleged that defense counsel was ineffective at trial when he failed to (i) obtain discovery, (ii) challenge Anderson's in-court identification, (iii) object to the trial judge's decision not to dismiss a juror, (iv) argue insufficient evidence, and (v) disclose a plea offer. Anderson alleged that defense counsel was ineffective on direct appeal by failing to argue that the State had not turned over discovery, challenge the in-court identification, argue insufficient evidence, and argue that the juror was disqualified.

(4) At the Superior Court's direction, the State and Anderson's former defense counsel each responded to the postconviction motion. On August 12, 2008, defense counsel filed an affidavit denying the allegations of ineffective assistance of counsel. On September 2, 2008, the State filed a

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<sup>1</sup> *Anderson v. State*, 930 A.2d 898 (Del. 2007).

response arguing that the postconviction claims were without merit or were procedurally barred.

(5) In a “motion to compel” filed on August 19, 2008, Anderson asked the Superior Court to compel defense counsel to provide him with discovery materials and a copy of the preliminary hearing transcript. According to Anderson, those documents were “essential” to his postconviction motion and to any appeal. In a “motion for default” filed on September 15, 2008, Anderson asked the Superior Court to dismiss the State’s response to the postconviction motion as untimely filed. Anderson argued that the State’s untimely response combined with defense counsel’s failure to provide him with the discovery materials and preliminary hearing transcript constituted a “complete miscarriage of justice.”

(6) By order dated December 4, 2008, the Superior Court denied Anderson’s motions to compel and for default. The Court concluded that the motion for default was “unfounded” to the extent it alleged that the State’s response was untimely filed. The Court also concluded that Anderson had not identified any discovery materials that he had been denied. Finally, after reviewing the preliminary hearing transcript and the postconviction claims, the Superior Court concluded, in the exercise of its discretion, that there was no basis upon which to provide the transcript to Anderson.

(7) By opinion also issued on December 4, 2008, the Superior Court denied the postconviction motion. The Court concluded that Anderson's allegations of ineffective assistance of counsel were without merit, and that his claim of insufficient evidence was procedurally barred as formerly adjudicated.

(8) On appeal, Anderson argues the identical claims that he raised in his postconviction motion, motion to compel and motion for default, with one exception. Anderson has not argued the claim that the State failed to disclose a plea offer. As a result, that claim is deemed to be waived on appeal.<sup>2</sup>

(9) When denying the postconviction motion, the Superior Court determined that Anderson's claim of insufficient evidence was procedurally barred as formerly adjudicated on direct appeal. We agree.<sup>3</sup> Anderson has not demonstrated that reconsideration of the claim is warranted in the interest of justice.<sup>4</sup>

(10) Having carefully considered Anderson's allegations of ineffective assistance of counsel in view of the Superior Court record as expanded with defense counsel's affidavit, we conclude that those

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<sup>2</sup> *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

<sup>3</sup> *Anderson v. State*, 930 A.2d 898, 901-02 (Del. 2007).

<sup>4</sup> Del. Super. Ct. Crim. R. 61(i)(4).

allegations are without merit for the reasons stated in the Superior Court's decision of December 4, 2008. After ruling that Anderson's underlying claims of improper in-court identification and juror disqualification were without merit, the Superior Court correctly reasoned that Anderson's counsel was not ineffective for not raising those claims at trial or on direct appeal. Similarly, absent Anderson's identifying any discovery that he was denied and, more importantly, any demonstration that he was prejudiced thereby, we agree with the Superior Court that Anderson has not established that his counsel was ineffective for failing to obtain or to provide him with discovery.<sup>5</sup>

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>5</sup> *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).