

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEROME SULLINS,	§
	§ No. 234, 2009
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0503013152
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 25, 2009
Decided: September 24, 2009

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

ORDER

This 24th day of September 2009, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Jerome Sullins, filed an appeal from the Superior Court's March 30, 2009 order summarily dismissing his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In December 2006, Sullins was found guilty by a Superior Court jury of Trafficking in Heroin, Possession With Intent to Distribute Heroin, Possession With Intent to Distribute Cocaine, Maintaining a Vehicle for Keeping Controlled Substances, Tampering With Physical Evidence, Conspiracy in the Second Degree,

Possession of Drug Paraphernalia, Resisting Arrest, Reckless Driving, Leaving the Scene of an Accident, Failing to Report an Accident, and Failing to Obey a Police Officer. Sullins was sentenced to a total of 25 years incarceration at Level V, to be suspended after 14 years for a period of probation. This Court affirmed Sullins' convictions and sentences on direct appeal.¹

(3) In this appeal, Sullins claims that his motion for postconviction relief should have been granted because a) the evidence obtained through a search of his residence should have been suppressed; b) the prosecution committed a Brady violation by failing to disclose exculpatory fingerprint evidence; and c) his attorney provided ineffective assistance by failing to bring the Brady violation to the attention of the jury.

(4) Under Delaware law, the first inquiry in any analysis of a claim for postconviction relief is whether the claim meets the procedural requirements of Rule 61.² Rule 61(i)(3)(A) and (B) provides that any ground for relief not asserted in the proceedings leading to the judgment of conviction is thereafter barred unless the movant shows, first, cause for relief and, second, prejudice from a violation of his rights. Sullins' first two claims were not asserted in his direct appeal and, thus, are procedurally defaulted. Moreover, Sullins has failed to overcome the procedural bar by demonstrating either cause for relief and prejudice from a

¹ *Sullins v. State*, Del. Supr., No. 526, 2007, Ridgely, J. (Apr. 2, 2008).

² *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

violation of his rights³ or a miscarriage of justice.⁴ As such, the Superior Court's dismissal of Sullins' first two claims must be affirmed,⁵ albeit on grounds different from those relied upon by the Superior Court.⁶

(5) Sullins' third claim is that his counsel provided ineffective assistance. In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁷ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁸ The defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.⁹ In the absence of any evidence that Sullins' counsel committed any error that resulted in prejudice to Sullins, the Superior Court's dismissal of this claim also must be affirmed.

³ Rule 61(i)(3)(A) and (B).

⁴ Rule 61(i)(5).

⁵ Sullins' first claim also is procedurally barred as formerly adjudicated because it was unsuccessfully asserted in a pretrial suppression hearing. Super. Ct. Crim. R. 61(i)(4).

⁶ *Unitrin, Inc. v. Amer. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995). The Superior Court summarily dismissed Sullins' claims as conclusory and unsupported by facts.

⁷ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁸ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁹ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice