

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JARELL CRAWLEY,	§
	§ No. 709, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0701009858
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 25, 2010
Decided: August 4, 2010

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

ORDER

This 4th day of August 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Jarell Crawley, filed an appeal from the Superior Court’s November 16, 2009 order adopting the Superior Court Commissioner’s October 26, 2009 report, which recommended that Crawley’s motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ We find no merit to the appeal. Accordingly, we affirm.

¹ Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

(2) The record reflects that, in September 2007, Crawley was found guilty by a Superior Court jury of Attempted Robbery in the First Degree, three counts of Wearing a Disguise During the Commission of a Felony, two counts of Assault in the Second Degree, three counts of Conspiracy in the Second Degree, two counts of Robbery in the First Degree, and Disregarding a Police Officer's signal. He was sentenced to a total of thirty-four years and sixty days of Level V incarceration, to be suspended after twenty-one years and sixty days for decreasing levels of supervision. On direct appeal, this Court reversed one of Crawley's convictions of Assault in the Second Degree.² His sentence was reduced to thirty-two years and sixty days of Level V incarceration, to be suspended after nineteen years and sixty days for decreasing levels of supervision.

(3) Crawley's convictions were based upon evidence presented at trial that consisted of the following. On January 10, 2007, Crawley and Ryan Resop, both African American men, attempted to rob the Chelsea BP gas station and convenience store in New Castle, Delaware. Ultimately, they fled the scene without taking any money. Approximately fifteen minutes later, they robbed the nearby Moore's Lane Citgo gas station of cigarettes and about \$200. The next day, after robbing Jay's Market in

² *Crawley v. State*, Del. Supr., No. 2, 2008, Berger, J. (May 5, 2009).

Newark, Delaware, the two men were apprehended by police after a high-speed chase. In all three cases, witnesses testified that the men were wearing ski masks and gloves, one of the men was carrying a BB gun, and the men escaped in a green Mitsubishi vehicle.

(4) In this appeal, Crawley claims that his trial counsel provided ineffective assistance because he failed to properly cross-examine the victim of the attempted robbery at the Chelsea BP concerning a police report regarding that incident that identified the robbers as “white.” To the extent that Crawley fails to raise issues in this appeal that he previously raised in the Superior Court, those claims are deemed to be waived and will not be addressed by this Court.³

(5) 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.⁴ Although not insurmountable, the Strickland standard is highly demanding and leads to a “strong

³ *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his postconviction motion filed in the Superior Court, Crawley also claimed that his trial counsel failed to present exonerating evidence and failed to object to false testimony given by the victim of the attempted robbery at the Chelsea BP gas station.

⁴ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

presumption that the representation was professionally reasonable.”⁵ The defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.⁶

(6) The record reflects that the evidence presented at trial against Crawley was strong. The witnesses’ descriptions of the robbers were strikingly similar in connection with all three incidents and coincided with what police observed when apprehending them. In his affidavit filed in the Superior Court, trial counsel stated that he made a tactical decision not to cross-examine the victim in the Chelsea BP incident regarding the police report’s description of the robbers as “white.”⁷ He stated that he believed aggressive cross-examination of the victim on that subject could backfire and lead to the State’s calling Ryan Resop to testify concerning Crawley’s involvement in the crimes. That decision is presumptively reasonable under Strickland and there is no indication that it had any impact on the ultimate result in the case.

(7) Crawley questions his trial counsel’s statement in his affidavit that a store videotape confirmed that the robbers were African American. Crawley cites to the Chelsea BP victim’s statement to police that the store

⁵ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁶ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

⁷ Counsel did ask the victim on cross-examination if he told the police the robbers were white and he denied having done so.

surveillance system was not operating on the day of the attempted robbery. However, the record reflects that the videotape to which counsel referred was not from the Chelsea BP incident, but, rather, from the Moore's Lane Citgo robbery. As such, Crawley's argument is without a factual foundation.⁸ On the basis of all of the above, we conclude that Crawley's has failed to demonstrate that his counsel committed errors that resulted in prejudice to him, as required under Strickland. Therefore, the Superior Court's judgment must be affirmed.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

⁸ The State in its answering brief also mistakenly refers to a videotape from the attempted robbery at the Chelsea BP.