

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY MADDOX,	§	
	§	No. 342, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0802028998
Appellee.	§	

Submitted: July 26, 2010  
Decided: September 20, 2010

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

**ORDER**

This 20<sup>th</sup> day of September 2010, upon consideration of the appellant’s opening brief, the appellee’s motion to affirm, and the Superior Court record, it appear to the Court that:

(1) The appellant, Gary Maddox, filed this appeal from the Superior Court’s May 27, 2010 denial of his motion for postconviction relief and May 28, 2010 denial of a related “amendment” to that motion. The appellee, State of Delaware, has filed a motion to affirm the Superior Court

judgment on the ground that it is manifest on the face of Maddox's opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) The record reflects that Maddox was indicted in April 2008 on charges of attempted first degree robbery, attempted second degree robbery, two counts of possession of a firearm during the commission of a felony and on count of possession of a firearm by a person prohibited. In August 2008, a Superior Court jury convicted Maddox of attempted first degree robbery and attempted theft (as a lesser included offense of attempted second degree robbery) and acquitted him on the remaining charges. On direct appeal, this Court affirmed Maddox's convictions pursuant to Supreme Court Rule 26(c).<sup>2</sup>

(3) Maddox's motion for postconviction relief raised the following three claims: (i) the trial judge erred when excluding the exculpatory portion of a statement that Maddox made to police, (ii) the indictment was defective when charging him with attempted first degree robbery, and (iii) his trial counsel was ineffective when he failed to object to the trial judge's alleged evidentiary error and to the alleged defective indictment. The amendment to the motion raised two additional claims: (i) the trial judge erred when instructing the jury on the attempted robbery charge, and (ii)

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<sup>1</sup> Del. Supr. Ct. R. 25(a).

<sup>2</sup> *Maddox v. State*, 2009 WL 2323490 (Del. Supr.).

Maddox's trial counsel, an assistant public defender, was ineffective on direct appeal when counsel did not seek leave to withdraw before transferring the case to another assistant public defender who filed a substitution of counsel and prepared and filed the opening brief.

(4) On appeal, Maddox has raised three of the five claims that he raised in his postconviction motion and amendment.<sup>3</sup> Two of those claims, namely those alleging defective indictment and error in the jury instructions, renew arguments that Maddox raised without success on direct appeal.<sup>4</sup> As to those formerly adjudicated claims, the Superior Court held, and we agree, that the claims are procedurally barred pursuant to Superior Court Criminal Rule 61(i)(4).<sup>5</sup> On appeal, as in the Superior Court, Maddox has not demonstrated that reconsideration of either of those claims is warranted in the interest of justice.<sup>6</sup>

(5) In his third claim on appeal, Maddox alleges that he was denied the effective assistance of counsel on direct appeal when the assistant public

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<sup>3</sup> To the extent Maddox has not argued the other two claims that he raised in his postconviction motion and amendment, those claims are deemed waived on appeal and will not be considered by the Court. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

<sup>4</sup> See *Maddox v. State*, 2009 WL 2323490 (Del. Supr.) (affirming Superior Court judgment after determining, in part, that the exculpatory portion of defendant's statement did not fall with an exception to the hearsay rule, and that the indictment provided full notice to defendant).

<sup>5</sup> See Del Super. Ct. Crim. R. 61(i)(4) (procedurally barring consideration of formerly adjudicated claim unless reconsideration is warranted in the interest of justice).

<sup>6</sup> *Id.*

defender who represented him at trial and who filed the notice of appeal did not seek leave to withdraw before transferring the case to a different assistant public defender who prepared and filed the opening brief. The record reflects no prejudice to Maddox as a result of the substitution of counsel on appeal. In the absence of a showing of prejudice, Maddox's claim of ineffective assistance of counsel is without merit.<sup>7</sup>

(6) It is manifest on the face of Maddox's opening brief that the appeal is without merit. The issues raised on appeal are clearly controlled by settled Delaware law, and to the extent the issues on appeal implicate the exercise of judicial discretion, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>7</sup> See *Strickland v. Washington*, 466 U.S. 668, 692-94 (1984) (holding that a defendant claiming ineffective assistance of counsel must show that counsel's representation was prejudicial).