

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TERRELL GEE,	§
	§
Defendant Below-	§ No. 664, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0608011014
Plaintiff Below-	§
Appellee.	§

Submitted: July 16, 2010  
Decided: September 23, 2010

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

**ORDER**

This 23<sup>rd</sup> day of September 2010, after considering the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Terrell Gee, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. We find no merit to the issues Gee raises on appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that a Superior Court jury convicted Gee in March 2007 of three counts of second degree rape. The Superior Court sentenced Gee to a total period of thirty-six years at Level V incarceration, to be suspended after serving thirty years for decreasing levels of

supervision. This Court affirmed Gee's convictions and sentence on direct appeal.<sup>1</sup> In June 2009, Gee filed his first motion for postconviction relief. After full briefing, including an affidavit from Gee's trial counsel, the Superior Court denied Gee's motion. This appeal followed.

(3) Gee raises four related issues in his opening brief on appeal.<sup>2</sup> First, Gee asserts that his trial counsel was ineffective for failing to investigate the alleged crime scene prior to trial. Second, Gee asserts that his trial counsel was ineffective for failing to interview potential witnesses. Third, Gee asserts that his trial counsel was ineffective for failing to investigate the lack of medical evidence or to obtain medical reports. Finally, Gee contends that his trial counsel was ineffective for failing to object to the prosecutor's discriminatory use of peremptory challenges during jury selection.

(4) In order to establish a claim of ineffective assistance of counsel, a defendant must show: (a) counsel's representation fell below an objective standard of reasonableness; and (b) there is a reasonable probability that, but for counsel's unprofessional errors, the outcome of the proceeding would

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<sup>1</sup> *Gee v. State*, 2008 WL 2267185 (Del. Supr. June 4, 2008).

<sup>2</sup> To the extent that Gee's postconviction motion raised additional claims not briefed on appeal, those claims are deemed waived. *See Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

have been different.<sup>3</sup> There is a strong presumption that counsel's representation was professionally reasonable.<sup>4</sup>

(5) Gee first asserts that his trial counsel was ineffective for failing to visit the scene of the alleged rapes. Gee asserts that counsel's failure to visit the crime scene somehow impeded counsel's ability to prove at trial that, due to the crowded conditions of the house, the alleged assaults could not have occurred as the victim described them. In response to Gee's allegations, defense counsel acknowledged that he did not personally visit the home where the crimes were alleged to have occurred. Nonetheless, counsel had interviewed witnesses and was aware of the overcrowded conditions of the small dwelling. Defense counsel called Gee's mother to testify about the layout of the house and its crowded conditions in order to cast doubt on the victim's testimony. On the stand, however, Gee's mother testified adamantly that the victim had never lived in the house, a fact that had not previously been in dispute and had been verified by other witnesses who testified. This testimony hurt her credibility as well as Gee's defense strategy, which was to cast doubt on the veracity of the victim's version of events. Under these circumstances, we find no error in the Superior Court's

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<sup>3</sup> *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>4</sup> *Flamer v. State*, 585 A.2d 736, 753-54 (Del. 1990).

conclusion that Gee could not establish either cause or prejudice from counsel's failure to visit the crime scene.

(6) Gee next asserts that trial counsel was ineffective for failing to interview possible witnesses who lived in the house who could have testified that another man had assaulted the victim. Gee does not identify any of these witnesses by name. Accordingly, these allegations are too conclusory and legally insufficient to establish ineffective assistance of counsel.<sup>5</sup>

(7) Gee's third claim is that trial counsel was ineffective for failing to investigate the lack of medical evidence proving that the victim was sexually abused. As defense counsel asserted and the Superior Court found, however, there was no error with respect to defense counsel's pretrial investigation or the discovery process. The victim simply reported the assaults too late in time for any relevant medical evidence to be collected. We agree with the Superior Court that Gee established neither cause nor prejudice with respect to counsel's performance.

(8) Finally, Gee argues that his trial counsel was ineffective for failing to object to the prosecutor's discriminatory use of peremptory challenges at trial to exclude potential jurors based on race or gender. In response to Gee's allegations, defense counsel asserted that there was no

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<sup>5</sup> See *Dawson v. State*, 673 A.2d 1186, 1196 (Del. 1996).

basis for a challenge to the State's use of its peremptory challenges. Gee offered no specific information contradicting counsel's assertion. Accordingly, we find no error in the Superior Court's conclusion that Gee's claim was too conclusory and lacking in detail to establish a claim of ineffectiveness.

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

BY THE COURT:

/s/ Carolyn Berger  
Justice