

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEMETRIUS DEMBY,	§
	§ No. 141, 2010
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. 0604011029
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 29, 2010
Decided: December 21, 2010

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

ORDER

This 21st day of December 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Demetrius Demby, filed an appeal from the Superior Court’s October 29, 2009 order adopting the October 9, 2009 amended report of the Superior Court Commissioner, which recommended that Demby’s first motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ We find no merit to the appeal and, accordingly, affirm.

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

(2) The record reflects that, in May 2006, the grand jury indicted Demby on charges of Possession With Intent to Deliver Cocaine, Maintaining a Vehicle for Keeping Controlled Substances and Driving Without a Seatbelt. Demby's subsequent motion to suppress was denied by the Superior Court following a hearing in November 2006. In April 2007, Demby was found guilty by a Superior Court jury of all three charged offenses. In June 2007, the Superior Court declared Demby a habitual offender and sentenced him to on the possession conviction to life in prison and on the conviction of maintaining a vehicle to 1 year at Level V, to be suspended for 1 year at Level II. Demby was assessed a fine on the seatbelt conviction. Demby's convictions were affirmed by this Court on direct appeal.²

(3) In this appeal from the Superior Court's denial of his first motion for postconviction relief, Demby claims that a) his trial counsel provided ineffective assistance at his suppression hearing; b) the Superior Court erred in denying his motion to suppress; c) the Superior Court erred by admitting the drug evidence at trial; d) the Superior Court erred by granting the State's motion for an extension of time in which to respond to his postconviction motion; e) his appellate counsel provided ineffective

² *Demby v. State*, Del. Supr., No. 316, 2007, Ridgely, J. (Feb. 28, 2008).

assistance by failing to raise certain claims; and f) the police officer witnesses committed perjury.³ Because this was Demby's first postconviction motion and contained claims of ineffective assistance of counsel, the Superior Court properly ordered that Demby's trial and appellate counsel submit affidavits pursuant to Rule 61(g)(2).⁴

(4) Prior to consideration of the merits of a postconviction motion pursuant to Rule 61, the procedural bars set forth in Rule 61(i) must first be applied.⁵ The record in this case reflects that Demby's sixth claim of impropriety on the part of the police witnesses was formerly adjudicated in his direct appeal. In the absence of any evidence that reconsideration of the claim is warranted in the interest of justice, we conclude that the claim is procedurally barred pursuant to Rule 61(i)(4).

(5) Demby's fourth claim that the Superior Court erred by granting the State's motion for an extension to respond to his postconviction motion is meritless. The Superior Court has the inherent authority to manage its own docket⁶ and there was no abuse of discretion on the part of the Superior

³ The record reflects that Demby did not raise either his second or third claim regarding suppression of the drug evidence in the Superior Court in the first instance. As such, we will not address either claim in this appeal. Supr. Ct. R. 8. The claims are procedurally barred pursuant to Rule 61(i)(4) in any case because they were formerly adjudicated on direct appeal.

⁴ *Horne v. State*, 887 A.2d 973, 975 (Del. 2005).

⁵ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁶ *State v. Wright*, 821 A.2d 330, 333 (Del. Super. 2003).

Court in managing the proceedings on Demby's motion for postconviction relief as it did.

(6) Demby's first and fifth claims involve allegations of ineffective assistance of counsel. In order to prevail on such a claim, the 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

(7) The record reflects that the claims of ineffective assistance raised by Demby in this appeal are not identical to the claims he asserted in his postconviction motion filed in the Superior Court.⁹ However, even assuming that the claims are properly before us, we conclude that they are meritless. While Demby claims that his trial counsel failed to raise the proper arguments in his motion to suppress, the record does not support that contention. Moreover, Demby has not demonstrated that his trial counsel was ineffective simply because the motion to suppress was unsuccessful.

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

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

⁹ Supr. Ct. R. 8.

While Demby further claims that his trial counsel failed to challenge the chain of custody with respect to the drug evidence, that claim is inconsistent with, and belied by, the trial record. Finally, Demby's claim that his appellate counsel was ineffective for failing to assert on direct appeal that his trial counsel was ineffective is equally meritless. This Court will not consider a claim of ineffective assistance of counsel made for the first time on direct appeal.¹⁰

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹⁰ *Wright v. State*, 513 A.2d 1310, 1315 (Del. 1986).