

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAPHUS ELEY,	§
	§
Defendant Below-	§ No. 118, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. Nos. 99-07-0027, 0028
Plaintiff Below-	§ 0031-0033
Appellee.	§

Submitted: July 12, 2002

Decided: August 12, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices

**ORDER**

This 12<sup>th</sup> day of August 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Raphus Eley, filed an appeal from the February 19, 2002 order of the Superior Court denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.<sup>1</sup> We find no merit to the appeal. Accordingly, we AFFIRM.

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<sup>1</sup>The Superior Court also denied a number of other motions filed by Eley.

(2) In this appeal, Eley claims that: a) his original trial counsel provided ineffective assistance by failing to file a timely appeal; b) he is entitled to a new trial because of the attorney's ineffective assistance; c) his subsequent counsel provided ineffective assistance during the post-trial proceedings; d) his coerced confession was improperly admitted into evidence at trial; and e) there was insufficient evidence presented at trial to sustain his conviction. To the extent Eley has not argued other grounds to support his appeal that were raised previously, those grounds are deemed waived and will not be addressed by this Court.<sup>2</sup>

(3) On October 27, 1999, a Superior Court jury found Eley guilty of 2 counts of Burglary in the Third Degree, 1 count of Assault in the Third Degree and 2 counts of Misdemeanor Theft. On December 10, 1999, Eley was sentenced, on one of the burglary convictions, to 3 years incarceration at Level V, to be suspended for Level III probation following the successful completion of

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<sup>2</sup>*Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his motion for postconviction relief, Eley also claimed that his waiver of a preliminary hearing was involuntary, his arrest warrant was not based on probable cause, the consolidation of his arrest warrants was erroneous, and he was not advised of his right to elect a trial in the Court of Common Pleas.

the Key Program and a Level IV Residential Substance Abuse Treatment Program. Eley received suspended sentences and probation on the remaining convictions.

(4) On January 28, 2000, Eley's trial counsel filed an untimely notice of appeal from Eley's convictions and sentences. This Court concluded that Eley had been provided ineffective assistance when trial counsel failed to perfect a timely appeal. Accordingly, we dismissed the untimely appeal and remanded the case to the Superior Court for resentencing and the appointment of new counsel.<sup>3</sup> Eley's new counsel then filed a timely appeal and moved to withdraw.<sup>4</sup> Eley's convictions and sentences were affirmed by this Court on direct appeal.<sup>5</sup>

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<sup>3</sup>*Eley v. State*, Del. Supr., No. 42, 2000, Walsh, J.(Feb. 29, 2000).

<sup>4</sup>SUPR. CT. R. 26(c).

<sup>5</sup>*Eley v. State*, Del. Supr., No. 137, 2000, Steele, J. (Dec. 20, 2000).

(5) In order to prevail on his claim of ineffective assistance of counsel, Eley must show that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.<sup>6</sup> Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."<sup>7</sup>

(6) Eley has failed to show that he was prejudiced by the representation provided by his trial counsel. While this Court previously ruled that Eley's trial counsel's performance fell below an objective standard of reasonableness,<sup>8</sup> there was no prejudice to Eley, since the matter was remanded to the Superior Court for resentencing and the appointment of new counsel, and Eley's direct appeal proceeded as it would have had his trial counsel filed a timely appeal. Nor does the trial record reflect that Eley's attorney's performance at trial resulted in any prejudice to him. Moreover, the record of the proceedings following the

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<sup>6</sup>*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>7</sup>*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

<sup>8</sup>*Eley v. State*, Del. Supr., No. 42, 2000, Walsh, J.(Feb. 29, 2000).

Superior Court's appointment of new counsel<sup>9</sup> does not reflect any error on the part of that attorney resulting in prejudice to Eley.

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<sup>9</sup>These proceedings included the resentencing hearing and a hearing on Eley's motion for postconviction relief.

(7) Eley's claim that his trial counsel's ineffective assistance entitles him to a new trial was not raised below,<sup>10</sup> thus precluding our consideration of the claim here. There is no merit to the claim in any case, since Eley has failed to demonstrate any error in his trial counsel's performance that would entitle him to such a remedy.<sup>11</sup>

(8) Eley's claim that his coerced confession was improperly admitted into evidence at trial is without any factual basis. There is simply no evidence in the record to support Eley's claim of a coerced confession. The issue of coercion was never raised by Eley, either during the pretrial phase or at trial. Indeed, while the arresting officer testified at trial that Eley made a confession and expressed remorse,<sup>12</sup> Eley adamantly denied that he had ever made a confession at all.

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<sup>10</sup>SUPR. CT. R. 8.

<sup>11</sup>SUPER. CT. CRIM. R. 33.

<sup>12</sup>The officer testified that he did not record the confession, but later noted in his written report what he remembered about it.

(9) Eley's final claim that there was insufficient evidence presented at trial to sustain his conviction is procedurally defaulted, since the claim was raised neither at trial nor on direct appeal,<sup>13</sup> and there is no evidence of cause for relief or prejudice from a violation of Eley's rights.<sup>14</sup> There is, moreover, no evidence of a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.<sup>15</sup> Our review of the trial transcript reflects that Eley's claim of insufficiency of the evidence is clearly without merit in any case.

(10) In its February 19, 2002 decision denying Eley's motion for postconviction relief, the Superior Court also denied a number of other motions filed by Eley, including motions for production of documentary evidence, production of transcripts, correction of illegal sentence, credit for time served, and an amended sentence. To the extent Eley claims error with respect to the Superior Court's disposition of those motions, that claim is without merit since

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<sup>13</sup>SUPER. CT. CRIM. R. 61(i) (3).

<sup>14</sup>SUPER. CT. CRIM. R. 61(i) (3) (A) and (B).

<sup>15</sup>SUPER. CT. CRIM. R. 61(i) (5).

our review of the record reveals no error or abuse of discretion on the part of the Superior Court.

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

BY THE COURT:

/s/ E. Norman Veasey  
Chief Justice