

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE W. ELLIOTT,	§
	§
Defendant Below-	§ No. 202, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN00-09-1466 R1
Plaintiff Below-	§
Appellee.	§

Submitted: June 30, 2003
Decided: August 11, 2003

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

ORDER

This 11th day of August 2003, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Andre W. Elliott, filed an appeal from the Superior Court's March 18, 2003 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment

of the Superior Court on the ground that it is manifest on the face of Elliott's opening brief that the appeal is without merit.¹ We agree and affirm.

(2) In March 2001, Elliott pleaded guilty to Rape in the Second Degree (Victim Less than 12). In May 2001, Elliott, who was represented by counsel, filed a motion to withdraw his guilty plea. Following an evidentiary hearing, the Superior Court denied Elliott's motion. In its order, the Superior Court found that: Elliott was aware of the potential sentence in connection with his guilty plea; there was no evidence that Elliott's attorney coerced him into pleading guilty; there was no evidence supporting Elliott's claim that he is innocent of the crime to which he pleaded guilty; and there was no evidence supporting Elliott's claim of ineffective assistance of counsel in connection with his guilty plea.

(3) In December 2001, Elliott was sentenced to fifteen years incarceration at Level V, to be suspended after ten years to decreasing levels of probation.² Elliott did not file a direct appeal from his conviction or sentence.

(4) In this appeal, Elliott claims that: a) the attorney who represented him at his guilty plea hearing provided ineffective assistance by

¹SUPR. CT. R. 25(a).

²The order was corrected in September 2002 to add court costs to the financial summary.

failing to investigate the facts, move to suppress his statement to the police, arrange for testing by a psychiatrist, assure that he was not subjected to double jeopardy, and file a direct appeal; b) the attorney who represented him in postconviction proceedings provided ineffective assistance by not preparing a defense; and c) the Superior Court abused its discretion by not permitting him to withdraw his guilty plea and by denying his motion for postconviction relief.

(5) In order to prevail on his claim of ineffective assistance of counsel, Elliott 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.³ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁴

(6) We have reviewed Elliott's claims of ineffective assistance of counsel in connection with the entry of his guilty plea and find them to be barred as formerly adjudicated.⁵ Moreover, we do not find that

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

⁴*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁵SUPER. CT. CRIM. R. 61(i) (4).

reconsideration of these claims is warranted in the interest of justice,⁶ since Elliott has failed to demonstrate that he was prejudiced by any alleged error on the part of his counsel. Elliott has also failed to demonstrate prejudice as the result of any alleged error on the part of the attorney who represented him in postconviction proceedings. Finally, Elliott's claim that the Superior Court abused its discretion by not permitting him to withdraw his guilty plea and by denying his motion for postconviction relief is unsupported by the record.

(6) It is manifest on the face of Elliott's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

⁶*Id.*