

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|--------------------------------|
| BRUCE WOOD, | § |
| | § No. 219, 2011 |
| 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. 0512020169 |
| | § |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: September 9, 2011

Decided: September 21, 2011

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

ORDER

This 21st day of September 2011, upon consideration of the parties' briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Bruce Wood, filed an appeal from the Superior Court's April 11, 2011 order adopting the Commissioner's March 22, 2011 report, which recommended that Wood's second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, in February 2006, Wood was arrested and charged with eighteen counts of Rape in the First Degree. Eight of the

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

counts charged Wood with Rape of a Victim Under Twelve Years of Age and the remaining ten counts charged him with Rape by a Person in a Position of Trust. Wood also was charged with two counts of Continuous Sexual Abuse of a Child. In February 2007, Wood was found guilty by a Superior Court jury of all charges, with the exception of two of the rape counts. Wood was sentenced to a total of 290 years of Level V incarceration. This Court affirmed Wood's convictions on direct appeal.² The Superior Court's denial of Wood's first postconviction motion also was affirmed by this Court.³

(3) In this appeal from the Superior Court's denial of his second motion for postconviction relief, Wood makes a number of claims that may fairly be summarized as follows: a) the procedures used at trial for the admission of the out-of-court statements of the complaining witnesses pursuant to Del. Code Ann. tit. 11, §§3507 and 3513 were improper; and b) his counsel was ineffective for failing to object to those improper procedures, request a hearing pursuant to §3508 to test the credibility of the complaining witnesses and investigate his use of psychotropic medications before and during trial.

² *Wood v. State*, 956 A.2d 1228 (Del. 2008).

³ *Wood v. State*, Del. Supr., No. 579, 2009, Ridgely, J. (Nov. 22, 2010).

(4) It is well-settled that the Superior Court must determine whether a defendant has met the procedural requirements of Rule 61 before considering the merits of his postconviction claims.⁴ In this case, the Superior Court properly found that Wood's second postconviction motion was time-barred under Rule 61(i) (1), given that the motion was filed over seventeen months after this Court's issuance of the mandate following Wood's direct appeal.⁵ Moreover, the Superior Court properly found that Wood's motion was procedurally barred under Rule 61(i) (2), (3) and (4) because a) with one exception, his claims were not asserted in his first postconviction motion; b) his claims were not asserted in his direct appeal; and c) he had already unsuccessfully asserted a claim of ineffective assistance of counsel for failing to investigate his use of psychotropic medications in his first postconviction motion.

(5) Wood argues that the ineffectiveness of his counsel resulted in a violation of his constitutional rights and, therefore, Rule 61's procedural bars are overcome by Rule 61(i) (5). In order to prevail on a claim of ineffective assistance of counsel, a 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

⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁵ Super. Ct. Crim. R. 61(m).

probability that the outcome of the proceedings would have been different.⁶ Although not insurmountable, the Strickland standard is highly demanding and leads to a strong presumption that the representation was professionally reasonable.⁷

(6) Wood claims that his counsel improperly failed to object to the procedures used at trial for the admission of out-of-court statements under §§3507 and 3513. Because the record reflects that the proper procedures were used at trial, Wood's counsel may not be faulted for failing to object to them. Wood's claim of ineffectiveness on that ground is, therefore, meritless. Wood also claims that his counsel failed to move for a §3508 hearing. His claim is belied by the record. Wood's counsel did, in fact, move for a §3508 hearing, but the trial judge ruled against him. In the absence of any evidence that the outcome of Wood's trial would have been different had the motion been granted, we conclude that this claim, too, is meritless. In the absence of any support for Wood's claim that his counsel was ineffective, or that his counsel's ineffectiveness resulted in a violation of his constitutional rights, we conclude that the Superior Court properly found Wood's claims to be time and procedurally barred.

⁶ *Strickland v. Washington*, 466 U.S. 668, 694 (1984).

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

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

BY THE COURT:

/s/ Randy J. Holland
Justice