

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JIMMY LEE MURPHY,	§
	§
Defendant Below-	§ No. 228, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. Nos. IK95-09-0365-
Plaintiff Below-	§ 0366
Appellee.	§

Submitted: October 26, 2001
Decided: December 10, 2001

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

ORDER

This 10th day of December 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Jimmy Lee Murphy, filed this appeal from the April 24, 2001 order of the Superior Court denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we **AFFIRM**.

(2) In this appeal, Murphy claims that the Superior Court abused its discretion in denying his motion for postconviction relief because his ability to support his claim of ineffective assistance of counsel was prejudiced by the

loss of his file by the Office of the Public Defender. To the extent Murphy has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court.¹

(3) In May 1996, Murphy was found guilty by a Superior Court jury of Delivery of Cocaine and Maintaining a Dwelling for the Keeping of Controlled Substances. He was sentenced as an habitual offender² to life in prison. This Court affirmed Murphy's convictions and sentences on direct appeal.³

(4) In March 1999, Murphy filed a motion for postconviction relief, which the Superior Court referred to a Commissioner for proposed findings and a recommendation.⁴ After ordering a briefing schedule, the Commissioner was notified that Murphy's public defender had retired and was medically incapacitated and, moreover, that the Office of the Public Defender was unable to locate its file relating to Murphy's case. Murphy then filed a

¹*Murphy v. State*, Del. Supr., 632 A.2d 1150, 1152 (1993). In his motion for postconviction relief, Murphy also argued that: a) the State failed to properly establish the chain of custody; b) his counsel was ineffective; and c) the trial court committed error.

²11 Del. C. § 4214(b).

³*Murphy v. State*, Del. Supr., No. 388, 1996, Hartnett, J., 1997 WL 328603 (May 30, 1997) (ORDER).

⁴10 Del. C. § 512(b).

modified motion for postconviction relief claiming he was entitled to an evidentiary hearing on the ground that his ability to present his claim of ineffective assistance had been prejudiced by the absence of the file and his counsel's inability to respond to his claim.⁵ The Commissioner reviewed the original trial transcript as the best evidence of Murphy's counsel's performance and, on that basis, found that Murphy had not been prejudiced by his counsel's inability to respond, an evidentiary hearing was not necessary⁶ and Murphy's claim of ineffective assistance was meritless. The Superior Court adopted the findings of the Commissioner in its April 24, 2001 order denying Murphy's motion for postconviction relief.

(5) Murphy's claim is without merit. We have carefully reviewed the record in this case and there is no evidence of error or abuse of discretion either on the part of the Commissioner or on the part of the Superior Court judge. The Commissioner properly relied on the trial transcript to review Murphy's claim of ineffective assistance and properly exercised her discretion in determining that Murphy had not been prejudiced by his counsel's inability to respond and that an evidentiary hearing was not necessary to decide

⁵Super. Ct. Crim. R. 61(g) (2).

⁶Super. Ct. Crim. R. 61(h) (1) and (3).

Murphy's claims. There is also no evidence of any error or abuse of discretion on the part of the Superior Court judge in adopting the findings of the Commissioner and her recommendation to deny Murphy's motion for postconviction relief.⁷

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.⁸

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁷10 Del. C. § 512(b).

⁸Murphy's motion to strike the appellee's brief is denied. Supr. Ct. R. 34.