

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DWAYNE E. CROPPER,	§
	§
Defendant Below-	§ No. 309, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN96-02-0924-
Plaintiff Below-	§ 0925
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, Dwayne E. Cropper, filed this appeal from the June 15, 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, Cropper claims that the Superior Court abused its discretion by: a) denying his motion for postconviction relief without an evidentiary hearing; b) denying his motion for appointment of counsel; and c)

assigning his case to a new judge who approached his claims with a closed mind. To the extent Cropper 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 February 1999, Cropper was found guilty by a Superior Court jury of Attempted Murder in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. He was sentenced as an habitual offender² to 35 years incarceration at Level V, to be followed by 10 years of decreasing levels of supervision. This Court affirmed Cropper's convictions and sentences on direct appeal.³

(4) There is no merit to Cropper's claims. First, whether an evidentiary hearing is scheduled on a motion for postconviction relief is within the discretion of the Superior Court.⁴ There was no abuse of discretion in the

¹*Murphy v. State*, Del. Supr., 632 A.2d 1150, 1152 (1993). In his motion for postconviction relief in the Superior Court, Cropper also argued that his counsel provided ineffective assistance.

²11 Del. C. § 4214(a).

³*Cropper v. State*, Del. Supr., No. 200, 1999, Holland, J., 2000 WL 139992 (Jan. 21, 2000) (ORDER).

⁴Super. Ct. Crim. R. 61(h) (1) and (3); *Shelton v. State*, Del. Supr., 744 A.2d 465, 510 (2000).

Superior Court's determination that there was sufficient record evidence to decide Cropper's motion without an evidentiary hearing. Second, there is no right to court-appointed counsel in postconviction proceedings⁵ and counsel will be appointed only for good cause shown.⁶ In the absence of a showing of good cause, the Superior Court properly exercised its discretion to deny Cropper's request for counsel. Finally, the Superior Court judge who decided Cropper's motion was properly assigned to his case following the retirement of the original judge.⁷ There is, moreover, no evidence that the judge, who issued a lengthy and thorough decision, did not give the matter due consideration or approached Cropper's claims with a closed mind.⁸

⁵*Garnett v. State*, Del. Supr., No. 529, 1997, Berger, J., 1998 WL 184489 (Apr. 9, 1998) (ORDER) (quoting *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987)).

⁶Super. Ct. Crim. R. 61(e) (1).

⁷Super. Ct. Crim. R. 61(d) (1).

⁸Contrary to Cropper's contention, it was a proper exercise of the judge's discretion not to consider Cropper's untimely request for additional time to respond to his attorney's affidavit pursuant to Superior Court Criminal Rule 61(g) (2).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.⁹

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁹Cropper's motion to strike the State's Answering Brief is without merit and, therefore, is denied.