

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WAYNE THOMAS,	§
	§
Defendant Below-	§ No. 152, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN95-11-1520-1521
Plaintiff Below-	§ IN95-10-0219
Appellee.	§ IN96-02-0376-0377
	§ IN96-05-0447

Submitted: March 26, 2001

Decided: May 17, 2001

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

ORDER

This 17th day of May 2001, upon consideration of the briefs on appeal, the record below and the Superior Court's March 26, 2001 report following remand, it appears to the Court that:

(1) The defendant-appellant, Wayne Thomas, filed an appeal from an 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, Thomas claims that: (a) he was provided ineffective assistance of counsel, first, because of the Superior Court's failure to remove his counsel due to a conflict¹ and, second, because his counsel failed to present his psychological problems as a defense; and (b) the Superior Court abused its discretion in denying his postconviction motion without holding an evidentiary hearing. To the extent Thomas 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.²

(3) On March 14, 1997, Thomas pleaded guilty to Robbery in the First Degree, Attempted Robbery in the Second Degree, two counts of Possession of a Firearm During the Commission of a Felony, Possession of Cocaine and Assault in the Second Degree. He was sentenced to a total of 15 years incarceration at Level V, to be suspended after 8 years for 3 years at Level IV Home Confinement, in turn to be suspended after 6 months for 5

¹Specifically, Thomas claims that the public defender who represented him at the time his guilty plea was entered had a conflict because he also represented Pierre Carter, Thomas' co-defendant in one of the cases encompassed by the plea agreement.

²*Murphy v. State*, Del. Supr., 632 A.2d 1150, 1152 (1993). Thomas also argued in his postconviction motion in the Superior Court that his confession was coerced and that his counsel failed to advise him of the direct and indirect consequences of his guilty plea.

years and 6 months at Level III, followed by 1 year of Level I probation. Thomas did not file a direct appeal from his convictions or sentences.

(4) On remand, this Court directed the Superior Court to conduct an evidentiary hearing to determine whether at the time of Thomas' guilty plea Thomas' attorney represented conflicting interests, whether an actual conflict of interest adversely affected his performance and, if a conflict existed, whether Thomas waived his right to conflict-free representation in accordance with the appropriate legal standards.³ In its March 26, 2001 report, the Superior Court determined that there was no active representation of conflicting interests by Thomas' public defender at the time of Thomas' guilty plea because he no longer represented Pierre Carter; Thomas' attorney's performance was in no way affected by an actual conflict of interest; and, after having been advised by his attorney of the potential conflict should the charges involving Thomas and Pierre Carter be scheduled for trial, Thomas waived his right to independent effective assistance of counsel in that matter.

(5) We have reviewed in detail the Superior Court's March 26, 2001 report following remand, the transcript of the Superior Court's evidentiary

³See *Thomas v. State*, Del. Supr., No. 152, 2000, Steele, J. (ORDER) Order at ¶¶ 9-10 (citing *Lewis v. State*, Del. Supr., 757 A.2d 709, 714-15, 717-18 (2000)).

hearing and the transcript of the plea colloquy. We conclude that, contrary to the finding of the Superior Court, the record reflects that, at the time of Thomas' guilty plea, Thomas' attorney also represented Thomas' co-defendant Pierre Carter in a matter that was encompassed by the plea agreement.⁴ We also conclude that the record supports the Superior Court's finding that Thomas was advised of the representation and knowingly, voluntarily and intelligently waived any conflict.⁵

(6) There is no merit to Thomas' claim that his counsel provided ineffective assistance. In order to prevail on this claim, Thomas 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.⁶ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was

⁴We again emphasize that the pitfalls of multiple representation exist not only at the trial stage, but at the plea negotiation stage as well. *Id.* at 718 (citing Commentary to ABA Standards for Criminal Justice: *Defense Function, Conflicts of Interest*, § 4-3.5 (3d ed. 1993)).

⁵*Id.* at 715.

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

professionally reasonable.”⁷ While the record supports Thomas’ allegation that, at the time of his guilty plea, his attorney represented a co-defendant in a matter encompassed by the plea agreement, there is no evidence that any errors on the part of Thomas’ counsel resulted in prejudice to him.

(7) Thomas’ final claim is that the Superior Court abused its discretion in denying his postconviction motion without holding an evidentiary hearing. The decision whether a postconviction motion merits an evidentiary hearing lies within the discretion of the Superior Court.⁸ Because this matter was remanded to the Superior Court for an evidentiary hearing on the issue of ineffective assistance of counsel, this claim is now moot.

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

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

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

⁸Super. Ct. Crim. R. 61(h).