

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARNELL E. HARRIS,	§
	§
Defendant Below-	§ No. 502, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN94-09-1663,1664
Plaintiff Below-	§ 1666,1710-1712,1740,1741
Appellee.	§

Submitted: March 20, 2001

Decided: April 25, 2001

Before **WALSH, HOLLAND** and **BERGER**, Justices

ORDER

This 25th day of April 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Darnell E. Harris, filed this 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, Harris claims that: i) his multiple convictions for possession of a firearm during the commission of a felony were not authorized by statute; ii) his convictions for both first degree and second

degree conspiracy constituted double jeopardy; iii) his constitutional rights were violated by the Superior Court's misleading and confusing jury instruction on accomplice liability; and iv) his trial counsel provided ineffective assistance.

(3) In 1996, Harris was convicted by a Superior Court jury of Conspiracy in the First Degree, Reckless Endangerment in the First Degree, Conspiracy in the Second Degree, three counts of Possession of a Firearm During the Commission of a Felony, Murder in the Second Degree and Riot. He was sentenced to a lengthy prison term. This Court affirmed Harris' convictions and sentences on direct appeal.¹

(4) When reviewing a motion under Rule 61, this Court must first determine that the motion satisfies the procedural requirements of the rule before addressing any substantive issues.² Harris' first and second claims were not raised either in the proceedings below or on direct appeal. As such, they are procedurally barred.³ Moreover, Harris has failed to overcome the procedural bar by showing either cause for relief from the

¹*Harris v. State*, Del. Supr., 695 A.2d 34 (1997).

²*Bailey v. State*, Del. Supr., 588 A.2d 1121, 1127 (1991).

³Super. Ct. Crim. R. 61(i) (3).

procedural default and prejudice from a violation of his rights⁴ or a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.⁵ This Court has ruled that separate convictions for each felony a defendant commits while in possession of a deadly weapon is consistent with the deterrence goal of 11 *Del. C.* § 1447 and is supported by its plain language.⁶ Furthermore, this Court has ruled that such convictions are constitutionally permissible.⁷ Also, it was not improper for Harris to be convicted under 11 *Del. C.* § 521(a) of two separate conspiracies in connection with two separate criminal offenses, where the evidence showed that the crimes were not the object of the same agreement.⁸ Harris' third claim was decided by this Court in his direct appeal and, therefore, is procedurally barred as formerly adjudicated.⁹

⁴Super. Ct. Crim. R. 61(i) (3) (A), (B).

⁵Super. Ct. Crim. R. 61(i) (5).

⁶*Robertson v. State*, Del. Supr., 630 A.2d 1084, 1092-93 (1993).

⁷*Evans v. State*, Del. Supr., 430 A.2d 481, 482 (1981); *Evans v. State*, Del. Supr., 445 A.2d 932, 933 (1982).

⁸*Liu v. State*, Del. Supr., 628 A.2d 1376, 1387-88 (1993).

⁹Super. Ct. Crim. R. 61(i) (4).

Moreover, there is nothing in the record to suggest that reconsideration of the claim is warranted in the interest of justice.¹⁰

(5) In order to overcome the procedural bars to his first three claims, Harris also claims that his trial counsel provided ineffective assistance. This claim is without merit. In order to prevail on his claim of ineffective assistance of counsel, Harris 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.¹¹ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."¹² Harris has failed to demonstrate any basis for his claim that error on the part of his counsel resulted in prejudice to him.

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

BY THE COURT:

¹⁰*Id.*

¹¹*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

¹²*Flamer v. State*, Del. Supr., 585 A.2d 736, 753 (1990).

/s/ Randy J. Holland
Justice