

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER GLOVER,	§
	§
Defendant Below-	§ No. 604, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. Nos. IK97-03-0010-
Plaintiff Below-	§ 0013 R1
Appellee.	§ IK97-03-0016 R1

Submitted: April 25, 2003
Decided: June 17, 2003

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

ORDER

This 17th day of June 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Christopher Glover, filed an appeal from the Superior Court's September 30, 2002 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ We find no merit to the appeal. Accordingly, we AFFIRM.

¹The Superior Court adopted the commissioner's report and recommendation dated April 26, 2002. DEL. CODE ANN. tit. 10, § 512(b); SUPER. CT. CRIM. R. 62.

(2) In March 1997, Glover was found guilty by a Superior Court jury of two counts of Attempted Assault in the First Degree (as a lesser-included offense of Attempted Murder in the First Degree), two counts of Possession of a Firearm During the Commission of a Felony and one count of Resisting Arrest.² Glover was sentenced to a total of 10 years incarceration at Level V, to be followed by decreasing levels of probation. Glover's convictions and sentences were affirmed by this Court on direct appeal.³

(3) While Glover's motion for postconviction relief was pending before the Superior Court commissioner, Glover submitted the affidavit of a co-defendant named Donnell Hill stating that he, and not Glover, had fired the shots at the occupants of the van.⁴ On October 22, 2001, the Superior Court commissioner held an evidentiary hearing regarding the matters contained in Hill's affidavit. Although there is no transcript of that hearing, it appears from the record that Hill appeared, but, once advised that he could be charged with perjury, refused to testify.

(3) In this appeal, Glover asserts the following claims: a) there was insufficient evidence to support his convictions of two counts of first degree

²The incident involved the October 1996 shooting of two men parked in a van outside a Dover nightclub. Three eyewitnesses testified at trial that Glover was one of two assailants who shot at the occupants of the van.

³*Glover v. State*, Del. Supr., No. 731, 1997, Berger, J. (May 7, 1998).

attempted assault; b) there was insufficient evidence of serious physical injury; c) his convictions of assault and possession of a firearm during the commission of a felony violated double jeopardy and due process; d) the jury instructions were inadequate and misleading; e) the State failed to prove accomplice liability; f) the Superior Court lacked jurisdiction; g) his counsel provided ineffective assistance by not asserting these claims on direct appeal; and h) the State engaged in prosecutorial misconduct by covering up Donnell Hill's perjury at trial and intimidating Hill into refusing to testify at the evidentiary hearing.⁵

(4) Glover's claims, with the exception of the last two, were either raised in his direct appeal or absent from his direct appeal. To the extent the claims were raised in Glover's direct appeal, they are barred as formerly adjudicated unless reconsideration of the claims is warranted in the interest of justice.⁶ Our review of the record in this case does not lead us to conclude that reconsideration of any of these claims is warranted in the interest of justice. To the extent the claims were not raised in Glover's direct appeal, they are procedurally defaulted unless Glover can demonstrate cause for relief from the procedural default and prejudice from a

⁴Another co-defendant also testified at trial that Hill, and not Glover, fired the shots.

⁵Glover was permitted to amend his postconviction motion to add this final claim after he submitted Hill's affidavit to the Superior Court. This claim was previously addressed by the Superior Court, at least in part, when it denied Glover's motion for new trial based on the affidavit of a cellmate of Donnell Hill stating that Hill admitted that he was the shooter.

⁶SUPER. CT. CRIM. R. 61(i) (4).

violation of his rights.⁷ Our review of the record in this case reveals no cause for relief from the procedural default and no prejudice from a violation of any right of Glover. Moreover, we find no lack of jurisdiction or constitutional violation that would excuse the procedural bar.⁸

(5) Glover claims that his counsel provided ineffective assistance by failing to assert on direct appeal the claims contained in his postconviction motion. In order to prevail on his claim of ineffective assistance of counsel, Glover must demonstrate 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.⁹ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."¹⁰ Glover has failed to demonstrate that any alleged error on the part of his counsel resulted in prejudice to him.

(6) Finally, Glover claims that the State improperly presented Donnell Hill's trial testimony knowing that it was false and, furthermore, intimidated Hill into refusing to testify at the evidentiary hearing by advising him that he could be

⁷SUPER. CT. CRIM. R. 61(i) (3) (A) and (B).

⁸SUPER. CT. CRIM. R. 61(i) (5).

⁹*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

charged with perjury. Glover did not request a transcript of the evidentiary hearing¹¹ and there is, therefore, no factual support for that portion of his claim. The record, including the trial transcript, does not support his claim of prosecutorial misconduct on the part of the State at trial.

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

BY THE COURT:

/s/ Myron T. Steele
Justice

¹⁰*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

¹¹The record does not reflect that Glover ever attempted to make arrangements for a transcript of the evidentiary hearing, either by paying for it himself or by requesting a copy at State expense. It was Glover's obligation to "cause a transcript . . . to be prepared, served and filed . . ." in order for the Superior Court to be able to conduct a *de novo* review of the commissioner's findings regarding this claim. SUPER. CT. CRIM. R. 62(a) (4) (iii).