

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLAUDE JONES,	§
	§
Defendant Below-	§ No. 665, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN99-11-0373
Plaintiff Below-	§ IN99-11-0378
Appellee.	§

Submitted: April 25, 2003
Decided: May 30, 2003

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

ORDER

This 30th day of May 2003, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Claude Jones, filed an appeal from the Superior Court’s November 7, 2002 order 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 July 2000, a Superior Court jury found Jones guilty of Robbery in the First Degree and Possession of a Firearm During the Commission of a Felony. He was sentenced to 25 years incarceration at Level V, to be suspended after 8

years for 17 years of probation. Jones' convictions and sentences were affirmed by this Court on direct appeal.¹

(3) In this appeal, Jones claims that: a) the Superior Court lacked jurisdiction to vacate and reinstate his sentence, which deprived him of his right to argue that his counsel provided ineffective assistance by failing to file a timely direct appeal; b) his counsel provided ineffective assistance by failing to file a timely direct appeal; and c) there was insufficient evidence presented at trial to support his convictions.

(4) In order to prevail on his claim of ineffective assistance of counsel, Jones 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.² Although not insurmountable, the Strickland standard is highly

¹*Jones v. State*, Del. Supr., No. 622, 2001, Walsh, J. (July 10, 2002). Jones' counsel originally failed to file a direct appeal and instead filed a motion for resentencing. When the motion was denied by the Superior Court, an appeal was filed. During the pendency of that appeal, Jones filed a pro se motion for postconviction relief claiming that his counsel was ineffective for failing to file a direct appeal. After a hearing, the Superior Court granted the motion and vacated and reinstated Jones' sentence, thereby permitting the filing of a timely direct appeal. The Superior Court denied Jones' subsequent motion for postconviction relief on jurisdictional grounds since the direct appeal was then pending in this Court. The Superior Court treated Jones' instant motion as his first motion for postconviction relief.

²*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

demanding and leads to a “strong presumption that the representation was professionally reasonable.”³

(5) Neither of Jones’ first two claims has merit. To begin with, Jones himself filed the motion for postconviction relief that resulted in the Superior Court’s vacation and reinstatement of his sentence, which permitted the timely filing of a direct appeal. He may not now complain that it was improper for the Superior Court to act on his motion.⁴ Furthermore, Jones’ contention that he has been deprived of his right to argue his ineffective assistance claim is factually incorrect, since that claim is now before this Court for determination. Finally, Jones has failed to show that any error on the part of his counsel has resulted in prejudice to him. A timely direct appeal from his convictions and sentences was ultimately filed and Jones’ claims were decided by this Court.

(6) Jones’ claim of insufficiency of the evidence is also unavailing. Because that claim was formerly adjudicated in Jones’ direct appeal, he is barred from relitigating it in these postconviction proceedings unless reconsideration of the claim is warranted in the interest of justice.⁵ We have reviewed the transcript

³*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁴*Webb v. State*, Del. Supr., No. 373, 2001, Steele, J. (Mar. 22, 2002).

⁵SUPER. CT. CRIM. R. 61(i) (4)

of the trial in this case and conclude that there is no basis for reconsideration of the claim.

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

BY THE COURT:

/s/ Myron T. Steele
Justice