

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALBERT T. JONES,	§
	§
Defendant Below-	§ No. 335, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN96-01-0944 R1
Plaintiff Below-	§ IN96-02-0354 R1
Appellee.	§ IN96-02-0355 R1

Submitted: February 24, 2001

Decided: March 27, 2001

Before **WALSH, HOLLAND** and **STEELE**, Justices

**ORDER**

This 27<sup>th</sup> day of March 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Albert T. Jones, 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, Jones claims that: i) the prosecution engaged in misconduct in failing to disclose exculpatory evidence and in making inflammatory remarks to the jury in opening and closing statements; ii)

there was insufficient evidence presented at trial to sustain his convictions; iii) the indictment was defective; iv) his right to a fair trial was prejudiced by the complainant's conduct prior to taking the witness stand and note taking by the jury; and v) his counsel was ineffective in failing to obtain the exculpatory evidence, subpoena the appropriate witnesses, request a mistrial based on the complainant's conduct prior to taking the witness stand and object to the inflammatory remarks made to the jury during opening and closing statements.

(3) In 1997, Jones was found guilty by a Superior Court jury of two counts of Unlawful Sexual Intercourse in the First Degree and one count of Continuous Sexual Abuse of a Child. Jones was sentenced to a total of thirty-two years incarceration at Level V, followed by probation. Jones' convictions and sentences were affirmed by this Court on direct appeal.<sup>1</sup>

(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.<sup>2</sup> Jones' claims are procedurally

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<sup>1</sup>*Jones v. State*, Del. Supr., No. 28, 1998, Berger, J., 1998 WL 985334 (Nov. 13, 1998) (ORDER).

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

barred because they were not raised previously in Jones' direct appeal.<sup>3</sup> Moreover, Jones has failed to overcome the procedural bar by showing either a) cause for relief from the procedural default and prejudice from a violation of his rights<sup>4</sup> or b) that the Superior Court lacked jurisdiction or a colorable claim of 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.<sup>5</sup>

(5) In order to prevail on his final 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.<sup>6</sup> Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."<sup>7</sup> Jones

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<sup>3</sup>Super. Ct. Crim. R. 61(i) (3). Because the trial court denied Jones' objection to note taking by the jury and denied Jones' motion for judgment of acquittal based on insufficient evidence, those claims are also barred in this appeal as formerly adjudicated. Super. Ct. Crim. R. 61(i) (4).

<sup>4</sup>Super. Ct. Crim. R. 61(i) (3) (A) and (B).

<sup>5</sup>Super. Ct. Crim. R. 61(i) (5).

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

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

has failed to demonstrate the probability that any alleged error by his counsel resulted in prejudice to him.

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

BY THE COURT:

/s/ Randy J. Holland  
Justice