IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAWRENCE McLAUGHLIN,	§	
	§	No. 262, 2001
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County in IK96-06-
	§	0264 & 0265-R1.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9606012699

Submitted: August 23, 2001
Decided: October 31, 2001

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

O R D E R

This 31st day of October 2001, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Lawrence McLaughlin, has appealed from the Superior Court's denial of McLaughlin's motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). The appellee, State of Delaware, has moved to affirm the judgment of the Superior Court

on the ground that it is manifest on the face of McLaughlin's opening brief that the appeal is without merit.[1] We agree and affirm.

(2) In August 1996, McLaughlin was charged in a seven-count indictment with two sets of charges. The charges arose from two incidents that occurred on June 13, 1996, at McLaughlin's former girlfriend's house in Dover, Delaware.[2]

(3) In February 1997, after a jury trial in the Superior Court, McLaughlin was convicted of Burglary in the Second Degree and Assault in the Second Degree. The jury found McLaughlin not guilty of Possession of a Deadly Weapon During the Commission of a Felony. The State entered a *nolle prosequi* on the remaining three charges of Aggravated Menacing, Offensive Touching and Criminal Mischief.

(4) Prior to sentencing, McLaughlin's trial counsel filed a motion for new trial. The motion for new trial raised two issues: (i) that the Superior Court erred when it admitted evidence of prior bad acts; and (ii) that the Superior

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[1]Supr. Ct. R. 25(a).

[2]The first incident occurred at approximately 2:00 a.m. on June 13, 1996, and led to charges of Aggravated Menacing, Possession of a Deadly Weapon During Commission of a Felony, Offensive Touching and Criminal Mischief. The second incident occurred at approximately 7:00 p.m. on June 13, 1996, and led to charges of Burglary in the Second Degree, Assault in the Second Degree, and Criminal Mischief.

Court erred when it failed to instruct the jury on lesser included offenses. By order dated August 8, 1997, the Superior Court denied the motion for new trial as untimely.[3] On September 5, 1997, McLaughlin was sentenced as an habitual offender to life in prison.[4]

(5) On direct appeal, McLaughlin's appellate counsel[5] raised only one of the two issues that trial counsel had raised in the untimely new trial motion, *i.e.*, that the Superior Court erred when admitting evidence of prior bad acts.[6] This Court concluded that McLaughlin's argument was without merit and affirmed the Superior Court's judgment.[7]

(6) McLaughlin filed his motion for postconviction relief on October 18, 1999. McLaughlin alleged four claims: (i) he was denied due process at sentencing because authorities had never informed him that his

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[3]*See* Super. Ct. Crim. R. 33 (providing that a motion for new trial must be filed within seven days after the verdict).

[4]11 *Del. C.* 4214(b).

[5]McLaughlin's appellate counsel was not his trial counsel.

[6]D.R.E. 404(b) provides that evidence of other crimes, or prior bad acts, is not admissible to prove that the defendant is a bad person who had a propensity to commit the crimes charged. It may be admissible, however "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident."

[7]*McLaughlin v. State*, Del. Supr., No. 416, 1997, Berger, J., 1998 WL 665056 (Sept. 14, 1998) (ORDER).

1992 North Carolina felony drug conviction by *nolo contendere* plea could later be used as a basis for an enhanced sentence; (ii) McLaughlin's trial counsel failed to contact McLaughlin's North Carolina defense attorney "to ascertain whether or not he could have been of any assistance"; (iii) both his trial and appellate counsel were ineffective when they failed to allege that the Superior Court should have instructed the jury on lesser included offenses; and (iv) the Superior Court relied upon an "impermissible basis" when it sentenced him to life in prison.

(7) By report dated December 12, 2000, a Superior Court Commissioner recommended that McLaughlin's postconviction motion should be dismissed as procedurally barred under Rule 61(i)(3). By order dated May 16, 2001, the Superior Court adopted the Commissioner's report and denied McLaughlin's motion for postconviction relief. This appeal followed.

(8) In his opening brief on appeal, McLaughlin raises only one of the claims that he raised in his postconviction motion, *i.e.*, that his trial and appellate counsel were ineffective when each failed to allege that the Superior Court should have instructed the jury on lesser included offenses.[8]

[8]Specifically, McLaughlin claims that the Superior Court should have instructed the

To the extent McLaughlin has failed to brief his other postconviction claims, those claims are deemed abandoned and will not be addressed by this Court.[9]

(9) To prevail on his claim of ineffective assistance of counsel, McLaughlin 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.[10] Although not insurmountable, the standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."[11]

(10) We have reviewed the record in this case, including trial and appellate counsel's respective Rule 61(g)(2) affidavits,[12] and conclude that trial counsel's decision not to request instructions on lesser included offenses did not

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jury on the offenses of Criminal Trespass in the Second Degree, Criminal Trespass in the Third Degree, and Assault in the Third Degree.

[9]*Somerville v. State*, Del. Supr., 703 A.2d 629, 631 (1997).

[10]*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

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

[12]Rule 61(g)(2) provides that if the motion for postconviction relief alleges ineffective assistance of counsel, the judge may direct the lawyer who represented the movant to respond to the allegations.

fall below an objective standard of reasonableness.[13] Moreover, in view of our conclusion that trial counsel's representation was reasonable, we find that appellate counsel's decision not to pursue the lesser included offenses issue on appeal was also reasonable.[14]

(11) In his opening brief on appeal, McLaughlin raises two new claims. McLaughlin alleges that the arrest warrants, indictment and habitual offender motion were "invalid and unconstitutional" documents because they lacked proper court seals. Second, McLaughlin claims that the two sets of charges stemming from the two incidents on June 13, 1996, were improperly joined in one indictment. Because McLaughlin did not raise these claims in his postconviction motion, we will review the claims now only for plain error.[15]

(12) There is no evidence in the record of plain error with respect to the arrest warrants, indictment or habitual offender motion. Moreover, there is no apparent error, plain or otherwise, in the joinder of the two sets of charges. The

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[13] *Strickland*, 466 U.S. at 689.

[14] *Id.* Moreover, it appears that the issue, which was not raised at trial, would have been procedurally barred pursuant to Rule 61(i)(3).

[15] Supr. Ct. R. 8. *See Trump v. State*, Del. Supr., 753 A.2d 963, 971 (2000) (citing *Wainwright v. State*, Del. Supr., 504 A.2d 1096, 1100 (1986)) (providing that plain error is error that is "so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial").

purpose of joinder is to promote judicial economy.[16] Two or more offenses may be joined in the same indictment if, as here, the offenses are of the same similar character.[17]

(13) It is manifest on the face of McLaughlin's opening brief that the appeal is without merit. The issues presented on appeal are controlled by settled Delaware law, and to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice

oc: Clerk of the Court
c: John Williams
Lawrence McLaughlin
Court's Distribution List
Hon. James T. Vaughn, Jr.

[16] *Sexton v. State*, Del. Supr., 397 A.2d 540, 545 (1979), *overruled on other grounds*, *Hughes v. State*, Del. Supr., 437 A.2d 559 (1981).

[17] Super. Ct. Crim. R. 8(a).