

IN THE SUPREME COURT OF THE STATE OF DELAWARE

REGINALD McRAE,	§
	§
Defendant Below-	§ No. 2, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. Nos. IK00-01-0776;0778;
Plaintiff Below-	§ 0780;0782;0783;
Appellee.	§ 0784;0785

Submitted: April 2, 2003

Decided: May 27, 2003

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

ORDER

This 27th day of May 2003, 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 defendant-appellant, Reginald McRae, filed an appeal from the Superior Court's December 11, 2002 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the

ground that it is manifest on the face of McRae's opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) McRae was found guilty by a Superior Court jury of Trafficking in Cocaine, Possession of Cocaine, Maintaining a Vehicle for Keeping Controlled Substances, Possession of Drug Paraphernalia, Driving While Suspended, Failure to Stop on Command, Driving a Vehicle Under the Influence of Alcohol, and Reckless Driving. McRae was sentenced as an habitual offender to life in prison on the trafficking conviction, was sentenced to additional prison terms on the other drug charges, and was assessed fines on the remaining charges. McRae's convictions and sentences were affirmed by this Court on direct appeal, except as to the charge of possession of cocaine.²

(3) In this appeal, McRae claims that his counsel provided ineffective assistance by failing to: a) object to the indictment on the ground of double jeopardy; b) challenge the constitutionality of the drug trafficking statute; c) argue that the State failed to prove actual or constructive possession of cocaine, as required under the statute; and d) investigate defense witnesses for trial.

¹SUPR. CT. R. 25(a).

²*McRae v. State*, Del. Supr., No. 505, 2000, Berger, J. (Oct. 1, 2001) (determining that McRae's convictions for trafficking in cocaine and possession of cocaine subjected him to double jeopardy and remanding for vacation of the possession conviction).

(4) In order to prevail on his claim of ineffective assistance of counsel, McRae 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.³ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁴

(5) McRae's claims of ineffective assistance of counsel are without merit. First, because this Court previously decided the double jeopardy claim in McRae's favor on direct appeal, he can not show prejudice as a result of his counsel's failure to raise the issue. Second, McRae has failed to articulate any error or prejudice due to his counsel's failure to raise a constitutional challenge to the drug trafficking statute.⁵ McRae's third claim is based on a faulty factual premise. The trial record reflects that McRae's counsel did argue at trial that the State failed to prove that he possessed the crack cocaine, but that the jury chose not to accept that

³*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁴*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁵This Court has previously held that DEL. CODE ANN. tit. 16, § 4753A neither violates the equal protection clause of the Fourteenth Amendment, nor mandates the imposition of cruel and unusual punishment under the Eighth Amendment. *Traylor v. State*, 458 A.2d 1170, 1176-79 (Del. 1983). This Court also has previously held that the statute is not ambiguous. *Shy v. State*, 459 A.2d 123, 125 (Del. 1983).

argument. Finally, McRae has provided no evidence that his counsel's failure to interview witnesses altered the outcome of his trial.

(6) It is manifest on the face of McRae's opening brief that this appeal is without merit because 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