

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSE D. BEZAREZ,	§
	§ No. 416, 2011
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
	§ for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0703000796
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 6, 2012
Decided: April 20, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 20th day of April 2012, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Jose D. Bezarez, filed an appeal from the Superior Court’s July 20, 2011 order adopting the Commissioner’s June 27, 2011 report, which recommended that Bezarez’s first motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ We find no merit to the appeal. Accordingly, we affirm.

¹ Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62. Because this was Bezarez’s first postconviction motion, Bezarez’s trial and appellate counsel were requested to submit affidavits in response to his allegations of ineffective assistance of counsel. Super. Ct. Crim. R. 61(g)(1) and (2); *Horne v. State*, 887 A.2d 973, 975 (Del. 2005).

(2) The record before us reflects that in October 2008, Bezarez was found guilty by a Superior Court jury of Intentional Murder in the First Degree, Felony Murder in the First Degree, Robbery in the First Degree, two counts of Attempted Robbery in the First Degree, Conspiracy in the Second Degree, and five counts of Possession of a Firearm During the Commission of a Felony.² Bezarez was sentenced to two life sentences plus substantial additional time at Level V. His convictions were affirmed by this Court on direct appeal.³

(3) In his appeal, Bezarez claims that a) the Superior Court erred during the trial proceedings when it permitted an uncertified interpreter to translate two Section 3507 statements;⁴ b) the Superior Court also erred during the trial proceedings when it permitted evidence of “prior bad acts” to be admitted in violation of D.R.E. 404(b); and c) the Superior Court erred when it denied his postconviction claims of ineffective assistance of counsel.

(4) Bezarez’s first claim is that the Superior Court erred by permitting an uncertified interpreter to translate two Section 3507 statements. The record reflects that two witnesses for the State gave

² In a subsequent bench trial, Bezarez also was found guilty of Possession of a Deadly Weapon By a Person Prohibited.

³ *Bezarez v. State*, 983 A.2d 946 (Del. 2009).

⁴ Under Del. Code Ann. tit. 11, §3507(a), the voluntary out-of-court prior statement of a witness who is present at trial and subject to cross-examination may be used as affirmative evidence with substantive independent testimonial value.

recorded statements in Spanish to a Spanish-speaking police officer. It appears that the statements were translated by a person who was not court-certified as required by Supreme Court Administrative Directive 107.⁵ The record further reflects that the first statement was not utilized by either party during the course of trial. The second statement was used to cross-examine the robbery victim at trial, but was not admitted into evidence. As such, Bezarez's claim of error is without a factual foundation and the Superior Court properly denied it.

(5) Bezarez next claims that the Superior Court erred by permitting evidence of "prior bad acts" in violation of D.R.E. 404(b). Because this issue was unsuccessfully raised by Bezarez in his direct appeal,⁶ it is procedurally barred as formerly adjudicated.⁷ Moreover, there is no evidence that reconsideration is warranted in the interest of justice.⁸ Therefore, the Superior Court properly denied the claim.

(6) Bezarez's final claim is that the Superior Court erred by denying his ineffective assistance of counsel claims and, specifically, his claims that his trial counsel failed (i) to request a jury instruction under *Bland v. State*,

⁵ *Diaz v. State*, 743 A.2d 1166, 1181-82 (Del. 1999).

⁶ *Id.* at 948-49 (concluding that evidence that Bezarez had previously fired the gun used in the killing was admissible under D.R.E. 404(b) to establish absence of mistake or accident and was not unduly prejudicial).

⁷ Super. Ct. Crim. R. 61(i) (4).

⁸ *Id.*

263 A.2d 286, 289-90 (Del. 1970) and (ii) to object to the Superior Court's use of Section 3507 statements that were translated by an uncertified translator, and also that his appellate counsel failed to raise the issue of the Section 3507 statements on direct appeal.

(7) In order to prevail on a claim of ineffective assistance of counsel, the defendant must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his 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 The defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.¹¹

(8) None of Bezarez's ineffectiveness claims withstands scrutiny under *Strickland*. He first claims that his trial counsel should have requested a cautionary jury instruction, pursuant to *Bland*, regarding the weight to be accorded accomplice testimony. Although Bezarez's attorney did not request such an instruction, Bezarez cannot show any resulting prejudice

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

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

¹¹ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

since there was significant additional evidence presented at trial corroborating the testimony of Bezarez's accomplice.¹² Bezarez's claims that his trial counsel improperly failed to object to the admission of the Section 3507 statements and that his appellate counsel improperly failed to raise a claim regarding the statements on direct appeal are both without merit since neither of the statements was admitted into evidence at trial. As such, the Superior Court properly denied Bezarez's ineffective assistance of counsel claims.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹² *Smith v. State*, 991 A.2d 1169, 1177-80 (Del. 2010) (the prejudicial effect of the absence of a *Bland* instruction depends upon the facts and circumstances of each case).