

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HERBERT WILLIAMS, III,	§
	§
Defendant Below-	§ No. 106, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. Nos. IN93-11-1189-1191
Plaintiff Below-	§ IN93-12-0260
Appellee.	§ IN93-12-0262-0267

Submitted: October 2, 2000

Decided: November 15, 2000

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

ORDER

This 15th day of November 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Herbert Williams, III, appeals 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, Williams claims that: first, the Superior Court abused its discretion in denying his motion for a continuance of the suppression hearing to allow his expert additional time to review his

videotaped statement to police; second, his statement to police was improperly admitted into evidence based on the perjured testimony of a witness for the State; and, third, letters from one of the alleged victims were improperly admitted into evidence in violation of Williams' due process rights. Williams contends that these claims were not previously raised due to ineffective assistance of counsel.

(3) In November 1993, Williams was charged with 11 counts of unlawful sexual intercourse in the third degree, 2 counts of unlawful sexual intercourse in the second degree and 4 counts of endangering the welfare of a child. In September 1995, a Superior Court jury acquitted Williams of 2 of the second degree unlawful sexual intercourse charges and found him guilty of 6 counts of unlawful sexual intercourse in the third degree and all 4 counts of endangering the welfare of a child. The jury was unable to reach a verdict on the remainder of the charges. Williams subsequently pleaded guilty to 4 counts of unlawful sexual intercourse in the third degree. This Court affirmed Williams' convictions on direct appeal.¹

¹*Williams v. State*, Del. Supr., No. 19, 1996, Hartnett, J., 1997 WL 560894 (Sept. 2, 1997) (ORDER).

(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.² Because none of Williams' claims were pursued on direct appeal, they are procedurally barred in this proceeding.³ Moreover, the record does not indicate any cause for relief from the procedural default or prejudice from a violation of Williams' rights,⁴ nor is there any indication of 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.⁵

(5) To the extent Williams seeks to excuse his failure to assert these claims in his direct appeal by claiming ineffective assistance of counsel, that claim is unavailing. In order to prevail on a claim of ineffective assistance of counsel, Williams must show that his counsel's representation fell below an objective standard of reasonableness and that,

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

³Super. Ct. Crim. R. 61(i) (3). The record, as we read it, does not support the State's contention that Williams' third claim was pursued on direct appeal. If it was, the claim would be barred as formerly adjudicated in any case. Super. Ct. Crim. R. 61(i) (4).

⁴Super. Ct. Crim. R. 61(i) (3) (A), (B).

⁵Super. Ct. Crim. R. 61(i) (5).

but for counsel’s unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁶ Although not insurmountable, the Strickland standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”⁷ The record in this case does not support Williams’ claim that his counsel committed errors that prejudiced his case.

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

BY THE COURT:

Randy J. Holland
Justice

⁶*Strickland v. Washington*, 466 U.S. 668, 694 (1984).

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