

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CYRIL D. McCRAY,	§
	§ No. 431, 2012
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0909007381
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 28, 2012
Decided: October 10, 2012

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 10th day of October 2012, 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, Cyril D. McCray, filed an appeal from the Superior Court’s July 24, 2012 order adopting the Superior Court Commissioner’s July 10, 2012 report, which recommended that McCray’s first motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ The plaintiff-appellee, the State of Delaware, has

¹ Del. Code Ann. tit. 10, § 512(b); Super. Ct. Crim. R. 62. Because this was McCray’s first postconviction motion and because it included a claim of ineffective assistance of

moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.²

We agree and affirm.

(2) The record reflects that, in April 2010, McCray was found guilty by a Superior Court jury of Possession With Intent to Deliver Cocaine, Maintaining a Dwelling for the Keeping of Controlled Substances, Tampering With Physical Evidence and Possession of Drug Paraphernalia. In June 2010, McCray was declared a habitual offender and was sentenced to a total of 9 years of Level V incarceration, to be suspended after 6 years for decreasing levels of supervision. This Court affirmed McCray's convictions on direct appeal.³

(3) In this appeal from the Superior Court's denial of his first postconviction motion, McCray has asserted two claims of error, which may be fairly summarized as follows: a) there was insufficient evidence presented at trial to support his conviction of Maintaining a Dwelling for the Keeping of Controlled Substances;⁴ and b) his counsel provided ineffective

counsel, the Commissioner requested that McCray's counsel file a responsive affidavit. *Horne v. State*, 887 A.2d 973, 975 (Del. 2005).

² Supr. Ct. R. 25(a).

³ *McCray v. State*, Del. Supr., No. 469, 2010, Jacobs, J. (Feb. 11, 2011).

⁴ To the extent that McCray also asserts a claim of insufficient evidence to support his conviction of Possession With Intent to Deliver Cocaine, any such claim will not be addressed in this appeal, since it was not addressed by the Superior Court in the first instance. Supr. Ct. R. 8.

assistance by failing to obtain his acquittal on all charges due to his counsel's inadequate preparation of the case, failure to challenge the defective indictment and failure to challenge the defective search warrant.

(4) McCray's first claim is that there was insufficient evidence to support his conviction of Maintaining a Dwelling for the Keeping of Controlled Substances.⁵ On a claim of insufficiency of the evidence, this Court must determine whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could find the defendant guilty beyond a reasonable doubt.⁶

(5) The record in this case reflects that, on September 9, 2009, the police found plastic baggies containing a total of 6.9 grams of crack cocaine and a total of 8 grams of marijuana during a search of Apartment 2, 402 West 7th Street, Wilmington, Delaware. During the search, McCray was seen leaving the bathroom where, moments before, drugs had been flushed down the toilet. McCray also had "buy money" from a police informant in his pocket and, at the time of his arrest, gave his address as Apartment 2, 402 West 7th Street. Moreover, there was testimony at trial from a police officer that a key to the apartment in question was found in McCray's

⁵ Del. Code Ann. tit. 16, §4755(a) (5) ("It is unlawful for any person [k]nowingly to keep or maintain any . . . dwelling . . . which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances or which is used for keeping or delivering them in violation of this chapter.")

⁶ *Robertson v. State*, 596 A.2d 1345, 1355 (Del. 1991).

possession. As such, there was sufficient evidence to support McCray's conviction of Maintaining a Dwelling for the Keeping of Controlled Substances. We, therefore, conclude that McCray's first claim of error is without merit.

(6) McCray's second claim is that his counsel provided ineffective assistance in several respects. In order to prevail on a claim of ineffective assistance of counsel, a 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.⁷ Under *Strickland*, there is a strong presumption that the representation was professionally reasonable.⁸

(7) McCray's allegation that his counsel was inadequately prepared is conclusory and unsubstantiated. Moreover, McCray does not demonstrate that his counsel's failure to challenge the indictment and search warrant resulted in any prejudice to him. As outlined in counsel's affidavit, neither the indictment nor the warrant was defective and, therefore, neither was

⁷ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁸ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

subject to challenge.⁹ McCray's ineffectiveness claims do not meet the requirements of *Strickland*. In the absence of any evidence of error on the part of his counsel that resulted in prejudice to him, we conclude that McCray's second claim likewise is without merit.

(8) It is manifest on the face of the 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, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁹ Counsel's affidavit states that the warrant was based upon a number of "controlled buys" of drugs at the apartment by police. Moreover, it would have been necessary for McCray to admit that the apartment where the search was conducted was his in order to have standing to move to suppress the drug evidence, which would have contradicted his position on the charge of maintaining a dwelling.