

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SYLVESTER MILLER,	§
	§ No. 436, 2013
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. 0408012099
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 30, 2013

Decided: October 23, 2013

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 23rd day of October 2013, 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, Sylvester Miller, filed an appeal from the Superior Court’s July 25, 2013 order denying his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that this appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, in March 2005, Miller was found guilty by a Superior Court jury of six counts of Rape in the First Degree and one count of Continuous Sexual Abuse of a Child. He was sentenced to a total of 95 years of Level V incarceration, to be suspended after 92 years for probation. This Court affirmed Miller's convictions on direct appeal.² In 2006, Miller filed his first motion for postconviction relief, which contained multiple claims of error, including several specific claims of ineffective assistance of counsel. Following the submission of Miller's counsel's affidavit and the State's response, the Superior Court denied Miller's motion. This Court affirmed the Superior Court's judgment.³

(3) In his second motion for postconviction relief filed in the Superior Court, Miller's claims of pre-trial and trial error were similar, if not identical, to the claims he asserted in his first postconviction motion---including claims of constitutional violations, juror misconduct, prosecutorial misconduct, indictment improprieties, perjured testimony and issues bearing

¹ Supr. Ct. R. 25(a).

² *Miller v. State*, 893 A.2d 937 (Del. 2006).

³ *Miller v. State*, 2008 WL 623236 (Del. Mar. 7, 2008).

on witness credibility. Miller's claims of ineffective assistance of counsel also largely mirrored those he alleged in his first postconviction motion--- including claims that his counsel was ineffective for failing to consult with him, misleading him concerning the evidence against him, denying him the opportunity for a fair trial, failing to present certain witnesses, failing to make proper objections and failing to object to the admission of his videotaped interview with police.

(4) In this appeal from the Superior Court's denial of his second postconviction motion, Miller claims that the Superior Court erred and abused its discretion by a) denying his claims of pre-trial and trial error on procedural grounds; b) denying his claims of ineffective assistance of trial counsel on substantive and procedural grounds; and c) denying his claim of entitlement to the appointment of counsel in connection with his first postconviction motion.

(5) Miller's first claim is that the Superior Court erred and abused its discretion by denying his claims of pre-trial and trial error on procedural grounds. The Superior Court is required to apply the time and procedural bars of Rule 61 to a defendant's claims prior to deciding the substantive merits of those claims.⁴ The record in this case reflects that the Superior

⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

Court properly applied the time and procedural bars to Miller's claims and found them to be time-barred⁵ and procedurally barred either because they were not raised in previous proceedings or because they were previously adjudicated.⁶ Moreover, the Superior Court reviewed the substance of the claims and properly determined that none of them merited review due to 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.⁷ In the absence of any error or abuse of discretion on the part of the Superior Court, we conclude that Miller's first claim is without merit.

(6) Miller's second claim is that the Superior Court improperly denied his claims of ineffective assistance of trial counsel on substantive and procedural grounds. Claims of ineffective assistance of counsel are governed by well-settled standards.⁸ 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

⁵ Super. Ct. Crim. R. 61(i) (1).

⁶ Super. Ct. Crim. R. 61(i) (2), (3) and (4).

⁷ Super. Ct. Crim. R. 61(i) (5).

⁸ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

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 Our review of the record reveals no error or abuse of discretion on the part of the Superior Court in concluding that Miller had failed to demonstrate ineffective assistance in accordance with the Strickland standards and, moreover, that the procedural bars of Rule 61 applied to his claims in the absence of any evidence of a constitutional violation.¹²

(7) Miller's third, and final, claim is that the Superior Court should have appointed counsel to represent him on the ineffectiveness claims he asserted in his first postconviction motion. The record reflects that Miller's claims of ineffective assistance were fully considered, and denied, in his first postconviction motion. Moreover, this Court affirmed the Superior Court's denial of those claims on appeal. In the absence of any evidence that Miller's allegations of ineffective assistance in his first postconviction motion were not fully and fairly considered, or that he experienced any

⁹ Id.

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

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

¹² Super. Ct. Crim. R. 61(i) (2), (4) and (5).

prejudice in connection with the adjudication of those claims, we conclude that the Superior Court correctly denied Miller's claim of entitlement to the appointment of counsel in connection with his first postconviction motion.

(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/ Myron T. Steele
Chief Justice