

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HERBERT WILLIAMS, III,	§	
	§	No. 558, 1999
Defendant Below,	§	
Appellant,	§	Court Below -- Superior Court
	§	of the State of Delaware, in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	Cr. A. No. IN94-09-0993
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9409004333

Submitted: May 1, 2000  
Decided: July 13, 2000

Before **VEASEY, Chief Justice, WALSH and HOLLAND**, Justices.

**O R D E R**

This 13th day of July 2000, upon consideration of the briefs on appeal and the Superior Court record, it appears to the Court that:

(1) The defendant-appellant, Herbert Williams, III ("Williams"), filed this appeal from an order of the Superior Court denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In 1993, Williams was arrested and charged with numerous counts of sexual offenses arising from his alleged sexual relations with several minors ("the 1993 case"). By order dated November 16, 1993, the Court of Common Pleas reduced Williams' bail in the 1993 case. As a condition of his release on

bail, Williams was prohibited from having any contact with his alleged victims “in any manner whatsoever.”<sup>1</sup>

(3) In September 1994, while Williams was released on bail in the 1993 case, Williams was indicted on three counts of Unlawful Sexual Intercourse in the Third Degree and one count of Noncompliance with Conditions of Release. The 1994 charges stemmed from Williams’ alleged sexual encounter during the summer of 1994 with one of the 1993 victims.

(4) On May 23, 1995, a Superior Court jury acquitted Williams of the Third Degree Unlawful Sexual Intercourse charges and convicted Williams of Noncompliance with Conditions of Release. After a presentence investigation, the Superior Court sentenced Williams to three years of incarceration at Level V, suspended after one year, for six months at Level IV supervision, followed by 18 months at Level III supervision. On appeal, this Court affirmed Williams’ conviction.<sup>2</sup>

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<sup>1</sup> *State v. Williams*, Del. CCP, Cr.A.Nos. 93-11-1189 - 1191 & IN93-12-0260, 0262 - 0267, DiSabatino, J. (Nov. 16, 1993). Williams was eventually tried in the Superior Court and was found guilty of six counts of Unlawful Sexual Intercourse in the Third Degree and four counts of Endangering the Welfare of a Child. Williams subsequently pled guilty to four counts of Unlawful Sexual Intercourse in the Third Degree. On direct appeal, this Court affirmed. *Williams v. State*, Del. Supr., No. 19, 1996, Hartnett, J., 1997 WL 560894 (Sept. 2, 1997) (ORDER).

<sup>2</sup> See *Williams v. State*, Del. Supr., No. 373, 1995, Hartnett, J., 1996 WL 376941 (July 1, 1996) (ORDER).

(5) In December 1998, Williams moved for postconviction relief. By order dated October 29, 1999, the Superior Court denied the motion. This appeal followed.

(6) In his postconviction motion, Williams raised nine claims, including: lack of due process when the 1993 bail conditions were imposed; insufficient evidence; and numerous allegations of ineffective assistance of counsel. On appeal, Williams furthers his arguments that the 1993 bail conditions were imposed improperly, that his counsel was ineffective, and that there was insufficient evidence to convict him. To the extent Williams has not argued the other claims that were raised in his postconviction motion, those claims are deemed waived and abandoned on appeal and will not be considered by the Court.<sup>3</sup>

(7) When reviewing the Superior Court's denial of a postconviction motion pursuant to Rule 61, this Court first must consider the procedural requirements of the rule before addressing any substantive issues.<sup>4</sup> Rule 61(i)(4) provides that any ground for relief that was formerly adjudicated is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.

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<sup>3</sup> See *Somerville v. State*, Del. Supr., 703 A.2d 629, 631 (1997); *Murphy v. State*, Del. Supr., 632 A.2d 1150, 1152 (1993).

<sup>4</sup> *Younger v. State*, Del. Supr., 580 A.2d 552, 554 (1990).

Rule 61(i)(3) provides that any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is barred unless the movant demonstrates “cause” for the failure to assert the ground and “prejudice” stemming from the alleged grievance. Rule 61(i)(5) states in pertinent part that the procedural bar in Rule 61(i)(3) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation.

(8) Williams did not attend the reduction of bail hearing in the 1993 case. Williams’ father and Williams’ attorney attended the hearing. Williams argued in his postconviction motion, and now on appeal, that he had a right to be at the bail hearing, and his absence from the hearing was a violation of due process.

(9) Williams’ claim, that his due process rights were violated when he was not present at the 1993 bail hearing, was raised in his direct appeal to this Court in the 1994 case. On direct appeal, the Court determined that Williams had stipulated at trial on the 1994 charges that, as a condition of his release on bail, he had been under an order to avoid contact with the victims in the 1993 case. As a result of that stipulation, this Court determined that Williams “waived any right to challenge the validity of [the] initial imposition” of the

condition.<sup>5</sup> Williams has not demonstrated why reconsideration of this claim is warranted in the interest of justice. Williams' claim was properly rejected by the Superior Court.

(10) Williams argues on appeal, as he did in his postconviction motion, that there was insufficient evidence for the jury to convict him of Noncompliance with Conditions of Release. Williams did not raise this claim in his direct appeal, nor did he raise it at trial. Thus, we find that Williams' claim is procedurally barred under Rule 61(i)(3), as Williams has not demonstrated cause for relief from the procedural default and prejudice. Furthermore, the claim is without merit. The record reflects that there was ample evidence from which the jury could find that Williams was guilty of Noncompliance with Conditions of Release.<sup>6</sup> Williams' postconviction claim of insufficient evidence was properly rejected.

(11) On appeal, Williams alleges, as he did in his postconviction motion, that his trial counsel was ineffective because she failed to timely object to the sentence imposed by the Superior Court. Williams also alleges that his counsel should not have stipulated at the 1994 trial to the conditions of bail imposed in

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<sup>5</sup> *Williams v. State*, Del. Supr., No. 373, 1995, Hartnett, J. 1996 WL 376941 (July 1, 1996), Order at 3.

<sup>6</sup> *See Williams v. State*, Del. Supr., 539 A.2d 164, 168 (1988).

the 1993 case. To prevail on his ineffective assistance of counsel claim, Williams must establish that: (i) his counsel's representation fell below an objective standard of reasonableness, and (ii) there exists a reasonable possibility that, but for his counsel's unprofessional errors, the outcome of the trial would have been different.<sup>7</sup> A defendant must substantiate specific allegations of actual prejudice.<sup>8</sup> There is a strong presumption that counsel's conduct fell within a wide range of reasonable professional assistance.<sup>9</sup>

(12) It appears that Williams' counsel made a reasonable tactical decision to stipulate to the existence of the bail conditions so that the jury would not hear potentially prejudicial evidence of Williams' misconduct. Williams does not dispute that he agreed to the trial strategy and was present when the stipulation was presented as evidence. Furthermore, Williams has not demonstrated that the outcome of the trial would have been different had the jury been presented with direct evidence of the conditions of his bail. Accordingly, Williams has not demonstrated that his trial counsel was ineffective when she entered into the stipulation.

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<sup>7</sup> See *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Wright v. State*, Del. Supr., 671 A.2d 1353, 1356 (1996).

<sup>8</sup> *Wright v. State*, 671 A.2d at 1356.

<sup>9</sup> *Id.* (citing *Flamer v. State*, Del. Supr., 585 A.2d 736, 753 (1990)).

(13) Williams alleges that his trial counsel was ineffective because she failed to object to Williams' sentence. Williams' claim is without merit. Williams has failed to allege on what basis his counsel should have objected to the sentence imposed. Furthermore, it appears from the record that Williams' counsel filed a motion for reduction of sentence that was denied prior to Williams' direct appeal. On direct appeal, this Court reviewed Williams' sentence and concluded that the sentence was "supported by the evidence and did not exceed that authorized by statute."<sup>10</sup>

(14) Williams alleges that his appellate counsel was ineffective for failing to provide this Court on direct appeal with documentation, namely the probable cause affidavit, to establish that Williams' arrest was illegal for lack of probable cause. The Superior Court found this assertion to be conclusory. We agree.

(15) Williams has failed to allege any actual prejudice, i.e., that the outcome of his trial would have been different, had his counsel provided this Court with a copy of the probable cause affidavit or other documentation relating to the arrest warrant. Furthermore, assuming *arguendo* that there was some deficiency in the arrest warrant, a separate probable cause determination was

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<sup>10</sup> *Williams v. State*, Del. Supr., No. 373, 1995, Hartnett, J., 1996 WL 376941 (July 1, 1996), Order at 5-6. (citing *Mayes v. State*, Del. Supr., 604 A.2d 839, 843 (1992)).

made by the grand jury that issued the indictment that led to Williams' prosecution in the Superior Court. Any deficiency in the arrest was cured by that indictment.<sup>11</sup>

(16) Finally, Williams alleges on appeal, as he did in his postconviction motion, that his appellate counsel was ineffective for failing to provide this Court on direct appeal with a copy of the sentencing transcript for review of alleged misinformation upon which the trial court relied at sentencing. Again, the Superior Court found the assertion to be conclusory and summarily dismissed the claim. We agree.

(17) As noted earlier in this decision, this Court on direct appeal reviewed Williams sentence under a plain error standard and found no error. Consequently, Williams cannot demonstrate that he was prejudiced by his counsel's failure to order a transcript of the sentencing proceeding for the direct appeal.

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

BY THE COURT:

/s/ Randy J. Holland

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<sup>11</sup> *Brokenbrough v. State*, Del. Supr., No. 309, 1994, Veasey, C.J., 1994 WL 605435 (Oct. 24, 1994) (ORDER).



Justice