

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEREK M. ROGERS,	§	
	§	
Defendant Below-	§	No. 247, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. A. Nos. IN02-01-0088;0089;
	§	2427-2429
Plaintiff Below-	§	
Appellee.	§	

Submitted: September 24, 2004
Decided: November 30, 2004

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

ORDER

This 30th day of November 2004, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Derek M. Rogers, filed an appeal from the Superior Court's May 10, 2004 order 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 February 2003, Rogers was found guilty by a Superior Court jury of Attempted Robbery in the First Degree, Assault in the First Degree, Wearing a Disguise During the Commission of a Felony, and two counts of Possession of a Firearm During the Commission of a Felony. He was sentenced to a total of 22

years incarceration at Level V, to be suspended after 17 years for decreasing levels of probation. On direct appeal, this Court affirmed Rogers' convictions and sentences.¹

(3) In this appeal, Rogers claims that: a) the evidence presented at trial was insufficient to support his convictions; b) his trial counsel provided ineffective assistance by failing to make any objections on the ground of insufficiency of the evidence; and c) his convictions should be reversed because there was no evidence independent of his confession to support his conviction. To the extent Rogers has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court.²

(4) Rogers' first claim of insufficiency of the evidence was unsuccessfully raised at trial in the form of a motion for judgment of acquittal. Thereafter, Rogers failed to raise the claim in his direct appeal. As such, the claim is barred in this proceeding both as formerly adjudicated³ and as procedurally defaulted⁴ and Rogers has failed to demonstrate the inapplicability of the procedural bars.⁵ The claim is without merit in any case. In essence, Rogers

¹ *Rogers v. State*, Del. Supr., No. 334, 2003, Holland, J. (Dec. 12, 2003).

² *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his postconviction motion filed in the Superior Court, Rogers also claimed prosecutorial misconduct.

³ Super. Ct. Crim. R. 61(i) (4).

⁴ Super. Ct. Crim. R. 61(i) (3).

⁵ Super. Ct. Crim. R. 61(i) (3) (A) and (B); (4) and (5).

argues that victim testimony without corroborating physical evidence is insufficient to support a conviction, but this Court has ruled otherwise.⁶

(5) Rogers' second claim is that his counsel's failure to object during the trial, permitting the case to proceed in the absence of sufficient evidence to support the convictions, constitutes ineffective assistance. This claim is without factual support because, in fact, Rogers' counsel did move for a judgment of acquittal on the ground of insufficiency of the evidence. Furthermore, Rogers may not demonstrate ineffective assistance on the basis of his counsel's failure to raise a meritless claim.⁷

(6) Rogers' third claim is that his convictions should be reversed since they were based solely upon his confession in violation of the corpus delicti rule.⁸ This claim was not presented to the Superior Court in the first instance and, therefore, we may not consider it for the first time on this appeal.⁹ Even if the claim were properly before us, we find no record support for it in any case. There is no evidence that Rogers confessed to the crimes of which he was convicted.

⁶ *Hardin v. State*, 840 A.2d 1217, 1224 (Del. 2003) (the victim's identification of the defendant as the perpetrator, without physical evidence linking the defendant to the crime, constitutes sufficient evidence to support a conviction).

⁷ *Williams v. State*, Del. Supr., No. 240, 1988, Horsey, J. (Aug. 25, 1988) (citing *Strickland v. Washington*, 466 U.S. 668 (1984) and *Stevenson v. State*, 469 A.2d 797 (Del. 1983)).

⁸ *DeJesus v. State*, 655 A.2d 1180, 1199 (Del. 1995) (the corpus delicti rule requires the prosecution to show some evidence of the existence of a crime, independent of the defendant's confession, to support a conviction).

⁹ Supr. Ct. R. 8.

Rather, the convictions were based principally on the testimony of the victim, who stated that Rogers was the perpetrator and that he wielded a gun while attempting to rob her. There is no evidence that the jury failed to properly carry out its duty to assess the credibility of the witnesses and resolve any conflicts in their testimony.¹⁰

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

BY THE COURT:

/s/ Carolyn Berger
Justice

¹⁰ *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).