

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MANUEL NIEVES,	§	
	§	
Defendant Below-	§	No. 381, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 0107022700
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: April 1, 2005
Decided: May 18, 2005

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

ORDER

This 18th day of May 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Manuel Nieves, filed an appeal from the Superior Court's August 16, 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 March 2002, Nieves was found guilty by a Superior Court jury of twenty counts of Rape in the First Degree, ten counts of Unlawful Sexual Contact in the Second Degree, one count of Rape in the Second Degree, and one count of Continuing Sexual Abuse of a Child. He was sentenced to a total of 322 years

incarceration at Level V. Nieves' convictions and sentences were affirmed by this Court on direct appeal.¹

(3) In this appeal, Nieves claims that: a) his trial attorney provided ineffective assistance by failing to secure an interpreter, properly prepare for trial, secure witness testimony, and investigate the motives of the victim; b) the trial judge improperly permitted a biased individual to sit on the jury; c) the trial judge's comment following the victim's testimony was unduly prejudicial; and d) the evidence presented at trial was insufficient to sustain his convictions.

(4) In order to prevail on his claim of ineffective assistance of counsel, Nieves must show 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.² Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."³

(5) While Nieves claims that his counsel should have secured a Spanish interpreter, he offers no factual basis for that claim. There is no evidence in the record that Nieves was not able to communicate with his counsel in English.

¹ *Nieves v. State*, Del. Supr., No. 352, 2002, Steele, J. (Feb. 11, 2003).

² *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

³ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

Moreover, he testified in his own defense at trial in English without any apparent difficulty. Nieves' claims that his trial counsel did not properly prepare for trial, secure the testimony of defense witnesses and investigate the motives of the victim are also without record support. Moreover, Nieves fails to demonstrate how the actions he claims should have been taken by his counsel would have altered the outcome of his case. Nieves' ineffective assistance of counsel claim is, thus, without merit.

(6) Nieves' next claim is that the trial judge improperly permitted a biased individual to sit on the jury. Specifically, Nieves argues that one of the jurors had a niece who had been sexually assaulted. While it appears that during voir dire one of the prospective jurors revealed that his niece had been sexually assaulted, that individual ultimately was dismissed from the jury. Because Nieves presents no evidence of bias on the part of the jurors who served, this claim is, therefore, without merit.

(7) Nieves next claims that he was deprived of a fair trial because of a remark the trial judge made following the testimony of the eight-year old victim. Specifically, the judge stated, “. . . you've done a great job. You can be excused now. Go outside and join your Mommy. Thank you very much.” No objection was made at the time of the judge's remark. On direct appeal, this Court found

that the remark did not jeopardize Nieves' right to a fair trial given the circumstances surrounding the remark and the fact that the jury was instructed that they were the sole determiners of the facts. Because Nieves failed to raise this claim in his postconviction motion, we decline to address it in this appeal.⁴ Even if Nieves had properly raised the claim in this appeal, it would be procedurally barred as formerly adjudicated.⁵

(8) Nieves' final claim is that there was insufficient evidence presented to sustain his convictions. Because this claim was asserted, unsuccessfully, in the Superior Court trial, it is barred in this proceeding as formerly adjudicated.⁶ The claim is without merit in any case. The testimony of the eight-year old victim provided sufficient evidence of Nieves' guilt, even though some of the specific details were contradicted by the testimony of another witness.⁷

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁴ Supr. Ct. R. 8.

⁵ Super. Ct. Crim. R. 61(i) (4).

⁶ Id.

⁷ *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).