

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHEN R. WINN,	§
	§ No. 27, 2005
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. 0103012308
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 7, 2005

Decided: December 8, 2005

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

**ORDER**

This 8<sup>th</sup> day of December 2005, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Stephen R. Winn, filed an appeal from the Superior Court's December 27, 2004 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.<sup>1</sup> We find no merit to the appeal. Accordingly, we AFFIRM.

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<sup>1</sup> Winn filed his original postconviction motion in September 2003. After receiving the original motion, the Superior Court requested Winn's counsel to file an affidavit addressing Winn's claims of ineffective assistance of counsel, which he did. Winn then filed a motion to supplement his original motion, which the Superior Court granted. Because the Superior Court's December 27, 2004 order failed to address Winn's supplemental grounds for relief, the Superior Court issued an additional order dated June 6, 2005, which addressed those grounds. Winn's supplemental claims having been

(2) In February 2002, Winn was found guilty by a Superior Court jury of Rape in the First Degree, Kidnapping in the First Degree, the lesser-included offense of Assault in the Third Degree, Terroristic Threatening, and Criminal Contempt of a Protection From Abuse Order. He was sentenced to a total of 47 years incarceration at Level V. Winn's convictions and sentences were affirmed by this Court on direct appeal.<sup>2</sup>

(3) In this appeal, Winn claims that: a) his counsel provided ineffective assistance by failing to provide zealous representation, conduct a meaningful investigation, pursue meaningful discovery, review a particular tape recorded statement, call necessary defense witnesses, and permit him to participate in jury selection; b) the judge failed to instruct the jury on the lesser-included offense of unlawful sexual intercourse in the first degree; c) there was insufficient evidence to support his kidnapping and rape convictions; d) a tape recording and medical records of the victim should not have been admitted into evidence; e) the victim should not have been permitted to testify to his prior bad acts; and f) the prosecution was improperly permitted to make inflammatory statements to the jury.

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addressed by the Superior Court, his "motion for amended claims from unlawful Superior Court order" is hereby denied.

<sup>2</sup> *Winn v. State*, Del. Supr., No. 328, 2002, Berger, J. (Mar. 19, 2003).

(4) In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.<sup>3</sup> Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."<sup>4</sup> A defendant asserting a claim of ineffective assistance of counsel is required to make concrete allegations of cause and actual prejudice or risk summary dismissal of the claim.<sup>5</sup>

(5) Our review of the record in this case does not reveal any basis for Winn's ineffective assistance of counsel claim. There is no evidence that any alleged error on the part of Winn's counsel resulted in any prejudice to Winn.

(6) Before addressing the merits of Winn's remaining claims, we must determine if any of those claims is subject to the procedural bars of Rule 61. Because Winn failed to raise his remaining claims in his direct

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<sup>3</sup> *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>4</sup> *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

<sup>5</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

appeal, they are procedurally barred in this proceeding.<sup>6</sup> Winn’s attempt to avoid the procedural bar by alleging ineffective assistance of counsel<sup>7</sup> and a “colorable claim” of a “miscarriage of justice”<sup>8</sup> is unavailing as there is no record support for those allegations.

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>6</sup> Super. Ct. Crim. R. 61(i) (3).

<sup>7</sup> Super. Ct. Crim. R. 61(i) (3) (A) and (B).

<sup>8</sup> Super. Ct. Crim. R. 61(i) (5).