

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEFFREY L. CRIPPEN,	§
	§
Defendant Below-	§ No. 443, 2001
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. Nos. IK94-04-0143R1-
Plaintiff Below-	§ 0145R1
Appellee.	§

Submitted: May 24, 2002

Decided: July 10, 2002

Before **HOLLAND, BERGER** and **STEELE**, Justices

**ORDER**

This 10<sup>th</sup> day of July 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Jeffrey L. Crippen, filed this appeal from the Superior Court's August 17, 2001 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>The Superior Court referred the matter to a Superior Court Commissioner for proposed findings of fact and conclusions of law. DEL. CODE ANN. tit. 10, § 512(b) (1999); SUPER. CT. CRIM. R. 62. In the absence of any objection to the Commissioner's report, and upon a de novo review, the Superior Court adopted the Commissioner's report and denied Crippen's motion for postconviction relief.

(2) In this appeal, Crippen claims that: a) his counsel provided ineffective assistance by sending another attorney to represent him at sentencing; b) his counsel provided ineffective assistance because of a conflict of interest; c) the prosecution engaged in misconduct by withholding a witness statement at trial that would have exonerated him and by presenting false evidence at the sentencing hearing that resulted in an enhanced sentence; and d) the evidence was insufficient to support the charges against him.

(3) On October 20, 1994, Crippen was found guilty by a Superior Court jury of Delivery of Cocaine, Trafficking in Cocaine and Conspiracy in the Second Degree.<sup>2</sup> On October 27, 1995, he was sentenced to a total of 37 years incarceration at Level V, to be suspended after 30 years for decreasing levels of probation. This Court affirmed Crippen's convictions and sentences on direct appeal.<sup>3</sup>

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<sup>2</sup>During the second day of trial, Crippen failed to return following the lunch break. The trial continued without Crippen and he was found guilty in absentia. Approximately one year later, Crippen was apprehended in Georgia and was returned to Delaware for sentencing.

<sup>3</sup>*Crippen v. State*, Del. Supr., No. 434, 1995, Hartnett, J. (June 20, 1997).

(4) The record reflects that Crippen's counsel began representing Crippen's sister, Audrey Miller, on federal drug charges in early 1995, following the conclusion of Crippen's Superior Court trial.<sup>4</sup> Miller entered a guilty plea to the federal drug charges in mid-1995, while Crippen was still a fugitive. In the fall of 1995, Crippen was captured and was subsequently sentenced. In January 1996, Crippen's counsel was approached by a prosecutor for the State of Delaware who asked if Miller would be willing to testify against Crippen on an outstanding racketeering charge.<sup>5</sup> Because he represented Crippen on the racketeering charge, Crippen's counsel was placed in an irreconcilable conflict and subsequently withdrew from representation of both Crippen and Miller.<sup>6</sup>

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<sup>4</sup>These charges were not related to Crippen's 1994 charges.

<sup>5</sup>The racketeering charge, IK94-05-0015, had been severed from Crippen's 1994 charges.

<sup>6</sup>PROF. COND. RULE 1.7.

(5) Crippen’s first two claims allege ineffective assistance of counsel. In order to prevail on such a claim, Crippen 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>7</sup> Although not insurmountable, the Strickland standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”<sup>8</sup> Crippen’s claims of ineffective assistance must fail. Although Crippen contends that he was provided ineffective assistance at sentencing and because of a conflict of interest, he fails to specify in what way any conduct on the part of counsel resulted in prejudice to him.

(6) Crippen’s claim that the prosecutor engaged in misconduct by withholding exculpatory evidence and by presenting false evidence that led to an enhanced sentence is meritless because it lacks record support.

(7) Crippen’s final claim of insufficient evidence to support a conviction was raised and rejected in Crippen’s direct appeal and, therefore, is

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<sup>7</sup>*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>8</sup>*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

procedurally barred as formerly adjudicated.<sup>9</sup> Moreover, there is no evidence that reconsideration of the claim is warranted in the interest of justice.<sup>10</sup>

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

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>9</sup>SUPER. CT. CRIM. R. 61(i) (4).

<sup>10</sup>ID.