

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNY F. REEDER, JR.,	§
	§ No. 273, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 9901009851A
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 10, 2006

Decided: May 3, 2006

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

ORDER

This 3rd day of May 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Kenny F. Reeder, Jr., filed an appeal from the Superior Court's May 26, 2005 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) Following a Superior Court jury trial, Reeder was found guilty of 14 counts of Burglary in the Second Degree, 3 counts of Senior Theft, 9 counts of Theft of a Firearm, 1 count of Possession of Burglar's Tools, 4 counts of Felony Theft, 1 count of Conspiracy in the Second Degree, 7

counts of Misdemeanor Theft, and 11 counts of Misdemeanor Criminal Mischief. The State moved to have Reeder declared a habitual offender.¹ The Superior Court granted the State's motion, but sentenced Reeder to a total of 32 years of Level V incarceration on only 4 of the 14 triggering convictions. The State then filed a motion for correction of Reeder's sentence, requesting that Reeder be sentenced as a habitual offender on all 14 of his burglary convictions. On May 3, 2000, the Superior Court granted the motion and imposed a total of 112 years of Level V incarceration. On direct appeal, this Court affirmed Reeder's convictions and sentences.²

(3) In this appeal, Reeder claims that: a) the Superior Court abused its discretion by denying his motion for postconviction relief on the ground that his claims of perjured testimony by a witness for the State, subornation of perjury by the prosecutor and abuse of discretion by the trial judge were procedurally barred; and b) his counsel provided ineffective assistance at trial and on appeal.

(4) Before considering the merits of a motion for postconviction relief, the Superior Court must first consider the procedural requirements of Rule 61.³ Rule 61(i) (4) provides that "any ground for relief that was

¹ Del. Code Ann. tit. 11, § 4214(a).

² *Reeder v. State*, Del. Supr., Nos. 552, 1999; 583, 1999, C.J. Steele (Mar. 26, 2001).

³ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.”

(5) In his motion for postconviction relief filed in the Superior Court, Reeder argued that Detective Conaway, a witness for the State at trial, committed perjury four times: first, when he testified that he got a description of stolen silverware cases from the victim during a telephone conversation; second, when he testified that he drove the stolen items to the victim’s house for identification; third, when he testified that he compared Reeder’s boots to boot prints left at the crime scenes; and, fourth, when he testified that a witness told him he had seen a black Mustang at one of the crime scenes. Reeder also argued that the prosecutor suborned perjury and that the Superior Court judge abused his discretion when he refused to permit the court reporter to read certain testimony to the jury during its deliberations.

(6) The record reflects that, in Reeder’s direct appeal, he unsuccessfully claimed that Detective Conaway presented inconsistent testimony at the suppression hearing and at trial concerning the description of the stolen silverware cases. As such, that claim is barred as formerly

adjudicated.⁴ Moreover, we do not find reconsideration of that claim to be warranted in the interest of justice.⁵

(7) Rule 61(i) (3) provides that “[a]ny ground for relief that was not asserted in the proceedings leading to the judgment of conviction . . . is thereafter barred, unless the movant shows . . . [c]ause for relief and prejudice” Reeder’s other three claims of “perjury” on the part of Detective Conaway and his claims of subornation of perjury on the part of the prosecutor and abuse of discretion on the part of the trial judge, which he raises for the first time in this proceeding, are barred as procedurally defaulted unless he can demonstrate cause for the procedural default and prejudice from a violation of his rights.⁶ We do not find that Reeder has sustained that burden. Nor do we find any miscarriage of justice that would excuse the procedural default.⁷ As such, there is no merit to Reeder’s claims of error and abuse of discretion on the part of the Superior Court.

(8) Reeder’s second claim is that his counsel provided ineffective assistance at trial and on appeal. In order to prevail on his claim of ineffective assistance of counsel, Reeder must show that his counsel’s representation fell below an objective standard of reasonableness and that,

⁴ Super. Ct. Crim. R. 61(i) (4).

⁵ Id.

⁶ Super. Ct. Crim. R. 61(i) (3) (A) and (B).

⁷ Super. Ct. Crim. R. 61(i) (5).

but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁸ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁹ This Court consistently has held that a defendant must set forth concrete allegations of actual prejudice and substantiate them, or risk summary dismissal.¹⁰

(9) In support of his claim of ineffective assistance, Reeder alleges that his counsel failed to: interview a potential defense witness; object to Detective Conaway's perjured testimony at the suppression hearing; renew the motion to suppress after a witness at trial contradicted Detective Conaway's testimony; cross-examine Detective Conaway about his perjured testimony; call Mrs. Conaway as a witness at the suppression hearing; obtain certain exculpatory evidence from the State; argue insufficient probable cause due to the perjured testimony; file a reply brief; and argue to the judge and jury that the trial was unfair due to the perjured testimony. To the extent Reeder has failed to present arguments previously made in his

⁸ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁹ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

¹⁰ *Younger v. State*, 580 A.2d at 555-56.

postconviction motion, those arguments are deemed abandoned and will not be addressed in this appeal.¹¹

(10) The bulk of Reeder's claims of ineffective assistance are based upon his assertion that Detective Conaway committed perjury. However, merely because Detective Conaway gave inconsistent testimony which was inconsistent with the testimony of other witnesses does not establish that he committed perjury. To the extent that Reeder's claims of ineffective assistance are based upon this unsupported assertion, we find them to be without merit. As for Reeder's remaining claims of ineffective assistance, we find that none of the alleged errors by his counsel resulted in prejudice to Reeder. These remaining claims are, therefore, also without merit.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹¹ *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his motion for postconviction relief, Reeder also argued that the sentences imposed by the Superior Court were improper.