

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD E. SHOCKLEY, JR.,	§	
	§	No. 599, 2005
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for Kent County in IK02-
	§	04-0149, 0150, 0153.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Cr. ID No. 0203023972

Submitted: January 31, 2006  
Decided: May 8, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

**ORDER**

This 8<sup>th</sup> day of May 2006, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) In March 2003, a Superior Court jury convicted the appellant, Richard E. Shockley, Jr., of Attempted Burglary in the Third Degree, Possession of Burglar’s Tools and Criminal Mischief. The Superior Court ordered a presentence investigation and scheduled sentencing for May 13, 2003.

(2) On May 12, 2003, the Office of Investigative Services (OIS), which conducts the Superior Court’s presentence investigations, requested that the Superior Court continue Shockley’s sentencing and order a psychiatric/psychological examination of Shockley “for sentencing purposes” and for “the overall treatment of Mr. Shockley.”<sup>1</sup>

(3) The Superior Court approved OIS’ request for a continuance and issued an order providing that Shockley undergo “a psychiatric/psychological evaluation at the Delaware Psychiatric Center” (DPC) to determine: (i) “[m]ental status at the time of the offense,” (ii) “psychiatric treatment needs, if any,” and (iii) “[o]ther any recommended treatment, including medication.”<sup>2</sup> The order provided that the evaluation reports should be returned to the Superior Court by July 1, 2003, and that copies of the reports should be provided to counsel and to OIS.<sup>3</sup>

(4) It appears from the record that DPC psychiatrist, Sylvia Foster, M.D., conducted the forensic psychiatric evaluation of Shockley on July 10,

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<sup>1</sup>*State v. Shockley*, Del. Super Ct., Cr. ID No. 0203023972, docket at 61.

<sup>2</sup>*See State v. Shockley*, Del. Super. Ct., Cr. ID No. 0203023972, Ridgely, P.J. (May 12, 2003) (ordering psychiatric/psychological examination).

<sup>3</sup>*Id.*

2003. Dr. Foster submitted her report to the Superior Court on August 28, 2003.

(5) Shockley was sentenced on November 21, 2003. At sentencing, both counsel and Shockley addressed his need for substance abuse treatment. When imposing the sentence, the Superior Court provided for the evaluation, treatment and monitoring of Shockley for substance abuse.<sup>4</sup> On direct appeal, this Court affirmed Shockley's convictions and sentence.<sup>5</sup>

(6) On September 15, 2005, Shockley filed a pro se motion seeking a new trial on the basis of newly discovered evidence.<sup>6</sup> According to Shockley, the newly discovered evidence consisted of records that corroborated his use of mind-altering prescribed medication at the time of the offense.

(7) In the Superior Court and on appeal, Shockley maintains that he attempted to inform the Delaware Psychiatric Center of the existence of the

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<sup>4</sup>*See State v. Shockley*, Del. Super. Ct., Cr. ID No. 0203023972 , Ridgely, P.J. (Nov. 21, 2003) (sentencing Shockley as a habitual criminal to five years at Level V for Attempted Burglary in the Third Degree and total of two and one-half years at Level V suspended for one year at Level IV Crest followed by eighteen months of probation).

<sup>5</sup>*Shockley v. State*, 2004 WL 1790198 (Del. Supr.).

<sup>6</sup>Within two months of filing his motion for new trial, Shockley filed three additional motions, including a motion to appoint counsel and a motion to unseal the psychiatric evaluation. Shockley also filed several amendments to the motions. In this Order, the Court refers collectively to the original motion for new trial, additional motions, and all amendments thereto, as "Shockley's new trial motions."

medication records prior to his evaluation. He now knows, however, that Dr. Foster did not have those records when she wrote her report. Thus, according to Shockley, any conclusions reached by Dr. Foster regarding his “mental status at the time of the offense” are inaccurate. To his further prejudice, says Shockley, he was deprived of due process when the Prothonotary failed to arrange for a court-ordered competency hearing at which he could have informed the Superior Court of the existence of the medical records that were not considered by Dr. Foster.<sup>7</sup>

(8) By orders dated November 23, 2005, the Superior Court denied Shockley’s new trial motions. This appeal followed.

(9) Superior Court Criminal Rule 33 provides that a motion for new trial based on newly discovered evidence may be made within two years after final judgment.<sup>8</sup> In this case, Shockley’s motion was timely filed.<sup>9</sup>

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<sup>7</sup>Shockley’s due process claim arises from the docket text summarizing the order that provided for his psychiatric/psychological evaluation. *See State v. Shockley*, Del. Super. Ct., Cr. ID No. 0203023972, docket at 60 (stating, in part, “competency hearing is required, prothonotary shall consult with counsel and schedule hearing”).

<sup>8</sup>Del. Super. Ct. Crim. R. 33 (2006).

<sup>9</sup>*Jackson v. State*, 654 A.2d 829, 832 (1995). Shockley filed his motion for new trial on September 15, 2005, within two years after his convictions became final on August 18, 2004, upon the issuance of this Court’s mandate on direct appeal. *See Shockley v. State*, Del. Supr., No. 600, 2003, docket at 19.

(10) A defendant seeking a new trial on the basis of newly discovered evidence must establish that the evidence at issue (i) could not have been discovered before trial by the exercise of due diligence, (ii) would probably change the outcome if a new trial is granted, and (iii) is not merely cumulative or impeaching.<sup>10</sup> This Court applies an abuse of discretion standard of review with respect to the Superior Court's grant or denial of a new trial.<sup>11</sup>

(11) In this case, Shockley has not demonstrated that the medical records could not have been discovered before trial by the exercise of due diligence. For this reason, we conclude that the Superior Court properly exercised its discretion when denying Shockley's new trial motions.

(12) Nonetheless, to the extent that Shockley's opening brief argues claims in the nature of postconviction relief that were either not raised or not ruled upon in the Superior Court, the Court declines to consider those claims.<sup>12</sup> The Superior Court should consider the claims in the first instance in a properly filed motion for postconviction relief.<sup>13</sup>

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<sup>10</sup>*Hicks v. State*, 1991 WL 78451 (Del. Supr.) (citing *Lloyd v. State*, 534 A.2d 1262, 1267 (Del. 1987)).

<sup>11</sup>*Horsey v. State*, 2006 WL 196438 (citing *Swan v. State*, 820 A.2d 342, 350 (Del. 2003)).

<sup>12</sup>The claims include ineffective assistance of counsel and violation of due process.

<sup>13</sup>See Del. Super. Ct. Crim. R. 61 (governing postconviction remedy) (2006) .

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice