IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEVEN A. BROUGHTON,	§	
	§	No. 525, 2005
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 9810001541

Submitted: February 21, 2006
Decided: June 6, 2006

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

O R D E R

This 6th day of June 2006, upon consideration of the appellant's opening brief and the State's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Steven A. Broughton, has appealed the Superior Court's decision of September 30, 2005, that summarily denied his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). The State has moved to affirm the Superior Court's decision on the ground that it is manifest on the face of Broughton's opening brief that the appeal is without merit. We agree and affirm.

(2) Following a 1999 jury trial in the Superior Court, Broughton was convicted of Rape in the First Degree, Kidnaping in the First Degree, Attempted Robbery in the First Degree, Assault in the Third Degree and Terroristic Threatening. The Superior Court sentenced Broughton to a total of fifty-two years at Level V suspended after thirty-five years for eighteen months at Level IV and probation. On direct appeal, this Court affirmed.[1]

(3) In February 2004, Broughton filed a motion for postconviction relief pursuant to Rule 61. Broughton raised (i) ineffective assistance of counsel, (ii) prosecutorial misconduct, (iii) judicial misconduct, (iv) insufficient evidence, (v) biased jury, (vi) rigged jury selection, and (vii) excessive sentence. The Superior Court denied Broughton's ineffective assistance of counsel claim on the merits and applied the procedural bars of Rule 61 to deny the remaining claims. This appeal followed.

(4) On appeal Broughton argues, as he did in his postconviction motion, that there was insufficient evidence to convict him of Kidnaping in the First Degree. The Superior Court determined, and we agree, that Broughton's

[1]*Broughton v. State*, 2001 WL 118005 (Del. Supr.).

claim is procedurally barred as formerly adjudicated[2] on direct appeal.[3] Broughton has not demonstrated that reconsideration of the claim is warranted in the interest of justice.[4]

(5) Broughton argues that there was insufficient evidence to convict him of Rape in the First Degree. The Superior Court determined that the claim is procedurally barred as formerly adjudicated. We agree that the claim is procedurally barred but conclude, alternatively, that Broughton did *not* raise the claim when he could have and has shown neither cause for relief from, nor prejudice as a result of, the procedural default.[5] Furthermore, Broughton has not made a colorable claim of a miscarriage of justice to warrant application of the exception to the procedural bar.[6]

---

[2]*See* Super. Ct. Crim. R. 61(i)(4) (barring formerly adjudicated claim unless reconsideration is warranted in the interest of justice).

[3]*See Broughton v. State*, 2001 WL 118005, at *1 (Del. Supr.) (concluding that there was sufficient evidence of independent restraint to submit the kidnaping charge to the jury).

[4]Super. Ct. Crim. R. 61(i)(4).

[5]*See* Super. Ct. Crim. R. 61(i)(3) (barring any ground for relief that was not asserted unless the movant can establish cause for the procedural default and prejudice from a violation of the movant's rights).

[6]*See*Super. Ct. Crim. R. 61(i)(5) (excepting jurisdictional and constitutional claims from certain procedural bars).

(6) Broughton argues that there was insufficient evidence to convict him of Attempted Robbery in the First Degree. The Superior Court concluded, and we agree, that the claim is barred because Broughton has shown neither cause for failure to raise the claim on direct appeal nor prejudice to his rights.[7] Broughton also has not made a colorable claim of a miscarriage of justice to warrant application of the exception to the procedural bar.[8]

(7) Broughton claims that the Superior Court imposed a sentence that was outside of the sentencing guidelines and in violation of the Eighth Amendment prohibition against cruel and unusual punishment. The Superior Court applied the procedural bars of Rule 61 to deny Broughton's claim. We conclude, alternatively, that the claim is not cognizable under Rule 61[9] and is otherwise without merit.[10]

(8) Broughton contends that the prosecutor "demanded" during closing argument that the jury return a conviction on the charge of Attempted

---

[7]Super. Ct. Crim. R. 61(i)(3).

[8]Super. Ct. Crim. R. 61(i)(5).

[9]*See Wilson v. State*, 2006 WL 1291369 (Del. Supr.) (concluding that postconviction challenge to non-capital sentence is not cognizable under Rule 61) (quoting Super. Ct. Crim. R. 61(a)(1))).

[10]*See Cruz v. State*, 1993 WL 227080 (Del. Supr.) (citing *Mayes v. State*, 604 A.2d 839, 845 (Del. 1992); *Gaines v. State*, 571 A.2d 765, 766-67 (Del. 1990); *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989); *Williams v. State*, 539 A.2d 164 (Del. 1988)).

Robbery in the First Degree for the sole purpose of justifying Broughton's conviction on the charge of Rape in the First Degree. Broughton claims that the prosecutor's remarks were inflammatory and caused the jury to return a conviction on Attempted Robbery in the First Degree when there was insufficient evidence to do so. We agree with the Superior Court that the record does not support Broughton's claim.[11]

(9) Broughton challenges the jury selection and the racial composition of the jury on the basis that only "names of white people" appeared at the top of the alphabetized list of potential jury members. The Superior Court concluded that the premise of Broughton's claim was "without a factual basis" and "meritless."

(10) Finally, Broughton alleges that his counsel was ineffective with respect to each of the foregoing postconviction claims. To prevail on his claim

---

[11]The transcript of the closing argument reflects in pertinent part:

> [PROSECUTOR]: If you find [Broughton] not guilty of attempted robbery, he gets out of the rape first. . . . [I]f a person is accosted, physically grabbed around the neck, that is physical force. If they keep saying to that person who is essentially being mugged . . . where is the money, they are attempting to obtain money from that person by physical force. . . .[S]he was caused physical injury and there was no money. That's why it's only attempted robbery, rather than a completed robbery first. Find him not guilty on attempted robbery first, he wins. . . . He's guilty as charged on all charges beyond a reasonable doubt[,] and that's according to the evidence.

Trial Tr. at C-43-44 (Aug. 18, 1999).

of ineffective assistance of counsel, Broughton must show that counsel's representation fell below an objective standard of reasonableness, and that the deficiencies in representation caused actual prejudice.[12]

(11) We have carefully reviewed Broughton's ineffective assistance of counsel claims in view of the record (including defense counsel's Rule 61(g)(2) affidavit) and the parties' arguments on appeal.[13] The Court concludes that Broughton's ineffective assistance of counsel claims are without merit for the reasons stated in the Superior Court's well-reasoned decision of September 30, 2005. Broughton has not demonstrated that his counsel was ineffective or that he was prejudiced as a result of any perceived ineffectiveness. The Superior Court properly disposed of Broughton's Rule 61 motion without requiring an evidentiary hearing.

(12) It is manifest on the face of the opening brief that Broughton's appeal should be affirmed. The issues on appeal are controlled by settled Delaware law. To the extent that judicial discretion is implicated, there was no abuse of discretion.

---

[12]*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

[13]*See* Super. Ct. Crim. R. 61(g)(2) (providing for lawyer's affidavit in response to allegations of ineffective assistance of counsel).

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/Henry duPont Ridgely
Justice