

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALBERT L. TILGHMAN,	§
	§
Defendant Below-	§ No. 420, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. Nos. K97-09-0327 thru
Plaintiff Below-	§ 0349
Appellee.	§

Submitted: September 6, 2002
Decided: September 19, 2002

Before **WALSH, HOLLAND** and **BERGER**, Justices

ORDER

This 19th day of September 2002, 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) The defendant-appellant, Albert L. Tilghman, appeals from the Superior Court's July 15, 2002 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior

¹The Superior Court adopted the report and recommendation of the commissioner dated June 21, 2002. DEL. CODE ANN. tit. 10, § 512(b); SUPER. CT. CRIM. R. 62.

Court on the ground that it is manifest on the face of Tilghman's opening brief that the appeal is without merit.² We agree and AFFIRM.

(2) On May 6, 1998, Tilghman was found guilty by a Superior Court jury of eighteen counts of Delivery of Cocaine, one count of Trafficking in Cocaine, one count of Possession of Cocaine with Intent to Deliver, one count of Possession of Marijuana, one count of Possession of Drug Paraphernalia, and one count of Conspiracy in the Second Degree. Tilghman was sentenced to a total of 98 years incarceration at Level V, to be followed by probation. This Court affirmed Tilghman's convictions and sentences on direct appeal.³

(3) In his appeal, Tilghman claims that his counsel provided ineffective assistance by failing to seek dismissal of the eighteen counts of Delivery of Cocaine as multiplicitous and in violation of double jeopardy. Tilghman also contends that the Superior Court unfairly permitted the State to file an untimely response to his motion for postconviction relief, which was prejudicial to him. To the extent Tilghman has not argued other claims

²SUPR. CT. R. 25(a).

³*Tilghman v. State*, Del. Supr., No. 419, 1998, Berger, J. (May 3, 1999).

that were raised in his postconviction motion, those claims are deemed abandoned and will not be addressed by this Court.⁴

(4) In order to prevail on his claim of ineffective assistance of counsel, Tilghman 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.⁵ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁶

(5) Tilghman may prevail on his claim of ineffective assistance of counsel only if he can show that his counsel erred by failing to object to the charges against him as multiplicitous.⁷ Tilghman was charged with and convicted of eighteen separate drug transactions, each involving a different buyer. The multiplicity doctrine was not violated because each transaction

⁴*Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his motion for postconviction relief in the Superior Court, Tilghman also argued that his counsel failed to file the appropriate pretrial motions, the Superior Court lacked jurisdiction, and there was prosecutorial misconduct.

⁵*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁶*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁷The multiplicity doctrine is implicated when a single criminal offense is divided into multiple counts of an indictment, thereby violating the double jeopardy provisions of the United States Constitution and the Constitution of the State of Delaware. U.S. CONST. amend. V; DEL. CONST. art. I, § 8.

constituted a separate criminal offense.⁸ Tilghman's claim that his counsel was ineffective by failing to object to the charges against him on the basis of the multiplicity doctrine is, thus, without merit.

(6) Tilghman's claim that the Superior Court unfairly prejudiced him by permitting the State to file an untimely response to his postconviction motion is also without merit. The record reflects that the State requested an extension of time to file a response to Tilghman's motion for postconviction relief, which the Superior Court granted. There was no prejudice to Tilghman, however, since the Superior Court also amended the brief schedule to afford Tilghman additional time to file his reply.

(7) It is manifest on the face of Tilghman's opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

⁸*Feddiman v. State*, 558 A.2d 278, 288-89 (Del. 1989); *Seward v. State*, 723 A.2d 365, 375-76 (Del. 1999).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice