

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AARON CARTER,	§
	§ No. 166, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0105020018A
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 26, 2006  
Decided: October 27, 2006

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

**ORDER**

This 27th day of October 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) The defendant-appellant, Aaron Carter, filed an appeal from the Superior Court’s March 3, 2006 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior

Court on the ground that it is manifest on the face of Carter's opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) In March 2002, Carter was found guilty by a Superior Court jury of three counts of Robbery in the First Degree, five counts of Kidnapping in the Second Degree, three counts of Aggravated Menacing in the First Degree, twelve counts of Possession of a Firearm During the Commission of a Felony, and single counts of Burglary in the First Degree, Conspiracy in the Second Degree, and Wearing a Disguise During the Commission of a Felony. He was sentenced to a total of fifty-seven years of Level V incarceration, to be followed by probation. Carter's convictions and sentences were affirmed by this Court on direct appeal.<sup>2</sup>

(3) In September 2005, Carter filed a motion for postconviction relief in the Superior Court. Following briefing, the Superior Court denied the motion in part and granted it in part, vacating Carter's convictions of Aggravated Menacing and one associated conviction of Possession of a Firearm During the Commission of a Felony.<sup>3</sup> The Superior Court noted that the 3-year minimum mandatory sentence on the weapon conviction was

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> *Carter v. State*, Del. Supr., No. 182, 2002, Steele, J. (Oct. 16, 2002).

<sup>3</sup> *Poteat v. State*, 840 A.2d 599, 604-06 (Del. 2003) (because aggravated menacing is a lesser-included offense of first degree robbery, the imposition of a separate sentence for each crime constitutes a violation of double jeopardy).

thereby eliminated, as was the one-year sentence on the aggravated menacing conviction, resulting in a total of fifty-three years of Level V incarceration.

(4) In this appeal, Carter claims that his trial counsel provided ineffective assistance by failing to object to his eleven remaining weapon convictions on double jeopardy grounds. To the extent Carter has not argued other grounds to support his appeal that previously were raised, those grounds are deemed waived and will not be addressed by this Court.<sup>4</sup>

(5) In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate 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>5</sup> Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."<sup>6</sup>

(6) Under Delaware law, it is not a violation of double jeopardy for the State to charge Possession of a Firearm During the Commission of a

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<sup>4</sup> *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his brief in the Superior Court, Carter also claimed that his counsel failed to: prepare for trial; object to irrelevant evidence; file a motion to dismiss the aggravated menacing charge; challenge the indictment; and secure a more lenient plea agreement.

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

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

Felony<sup>7</sup> for each firearm possessed and for each felony committed.<sup>8</sup> As such, Carter's counsel did not commit error by failing to object to his eleven remaining weapon convictions on double jeopardy grounds. Because Carter has failed to demonstrate that any error on the part of his trial counsel resulted in prejudice to his case, his claim of ineffective assistance of counsel is unavailing.

(7) It is manifest on the face of Carter's opening brief that this 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, there was no abuse of discretion.

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

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<sup>7</sup> Del. Code Ann. tit. 11, § 1447A.

<sup>8</sup> *Nance v. State*, 903 A.2d 283, 288 (Del. 2006).