

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN J. ROBINSON,	§	
	§	No. 85, 2012
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0805019287
Appellee.	§	

Submitted: June 22, 2012
Decided: September 19, 2012

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

O R D E R

This 19th day of September 2012, upon careful consideration of the parties' briefs and the Superior Court record, it appears to the Court that:

(1) The appellant, Kevin J. Robinson, filed this appeal from the Superior Court's January 31, 2012 memorandum opinion denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61").¹ We have determined that there is no merit to the appeal and affirm the judgment of the Superior Court.

(2) The background of this matter is as follows. In April 2009, following a Superior Court jury trial, Robinson was found guilty of Murder

¹ *State v. Robinson*, 2010 WL 1415645 (Del. Super.).

in the First Degree, two counts of Robbery in the First Degree, and three counts of Possession of a Firearm During the Commission of a Felony. After a presentence investigation, Robinson was sentenced to life imprisonment plus fifteen years. On direct appeal we affirmed the Superior Court's judgment.²

(3) In his motion for postconviction relief, Robinson alleged that his trial counsel was ineffective when he failed to (i) file a motion to suppress, (ii) request Robinson's recorded statement in a timely manner, (iii) subpoena a witness to testify at trial, (iv) provide Robinson with a full copy of discovery, and (v) advise Robinson of his right to testify. Robinson alleged that the Superior Court trial judge erred when (i) admitting Robinson's statement into evidence, (ii) limiting the cross-examination of a co-defendant, (iii) having an ex parte contact with the jury, (iv) instructing the jury, and (v) facilitating a compromise verdict.

(4) The Superior Court directed that Robinson's trial counsel filed a response to the allegations of ineffective assistance of counsel and that the State file a response to the motion. Thereafter, with the Superior Court's permission, Robinson filed an amendment to the postconviction motion.

² *Robinson v. State*, 3 A.3d 257 (Del. 2010).

Robinson's amendment reiterated and/or refined three of the ten claims advanced in the original motion.

(5) In his opening and reply briefs on appeal, Robinson raises only the three claims that were the subject of his amendment to the motion. Also, Robinson contends that the Superior Court failed to consider the amendment when deciding the postconviction motion, but his contention is not supported by the record.

(6) In his first two claims on appeal, Robinson alleges that his trial counsel was ineffective for failing to move to suppress Robinson's statement to police and for not discovering the identity of the individual who told police that he overheard Robinson's co-defendant threaten a victim. In his third claim, Robinson alleges that the trial judge committed plain error by having contact with the jury outside the presence of Robinson or his trial counsel.³

(7) The Superior Court considered the merit of Robinson's ineffective counsel claims and found none, determining that "it was well within the bounds of defense counsel's professional judgment not to file any suppression motions in this case," and that a strategic decision not to compel testimony from the individual who overheard a phone conversation "was

³ Robinson's other postconviction claims that are not raised on appeal are deemed waived and abandoned. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

within the wide range of counsel's professional judgment.”⁴ The Superior Court barred Robinson's claim of improper jury contact under Rule 61(i)(3)⁵ after determining that Robinson could have raised the claim on direct appeal but did not and that review of the claim was not otherwise warranted.⁶ As to all three of Robinson's claims, we have determined that there is no merit to the appeal and affirm for the reasons stated by the Superior Court in its well-reasoned memorandum opinion of January 31, 2012.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁴ *State v. Robinson*, 2010 WL 1415645, at *2 (Del. Super.). See *Strickland v. Washington*, 466 U.S. 668, 692 (1984) (holding that a defendant claiming ineffective assistance of counsel must show that counsel's representation fell below an objective standard of reasonableness and was prejudicial).

⁵ See Del. Super. Ct. Crim. R. 61(i)(3) (barring a claim not previously raised absent cause for relief from the procedural default and prejudice).

⁶ See Del. Super. Ct. Crim. R. 61(i)(5) (providing in pertinent part that the procedural bar of (i)(3) shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).