

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LINNARD L. SLADE,	§	
	§	
Defendant Below-	§	No. 512, 2002
Appellant,	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
STATE OF DELAWARE,	§	in and for Kent County
	§	Cr.A. Nos. IK97-02-0093-R1
Plaintiff Below-	§	IK97-02-0094-R1
Appellee.	§	IK97-05-0141-R1-
	§	0144-R1

Submitted: February 7, 2003

Decided: March 20, 2003

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

ORDER

This 20th day of March 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Linnard L. Slade, filed an appeal from the Superior Court's August 14, 2002 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ We find no basis for the appeal. Accordingly, we AFFIRM.

(2) In January 1999, Slade was found guilty by a Superior Court jury of two counts of Delivery of Cocaine, one count of Possession of

Marijuana, one count of Possession of Cocaine, and two counts of Conspiracy in the Second Degree. He was sentenced to 10 years incarceration at Level V, to be followed by probation. Slade's convictions and sentences were affirmed by this Court on direct appeal.²

(3) At trial, the State presented evidence that Slade and another individual, William Bowden, were both present during two drug transactions involving undercover police officers.³ On one occasion, Slade was present when Bowden handed the drugs to the officer and, on the other occasion, Slade handed the drugs to the officer himself. After both sides had rested, defense counsel moved for judgment of acquittal as to one of the counts of Delivery of Cocaine, arguing that the evidence was sufficient to support only one count of Delivery of Cocaine against Slade. The Superior Court judge denied the motion, noting that the evidence was sufficient to support Slade's conviction as an accomplice on the second count.⁴ Accordingly, the

¹The Superior Court adopted the findings and recommendation of the commissioner dated July 24, 2002. DEL. CODE ANN. tit. 10, § 512(b) (1999); SUPER. CT. CRIM. R. 62.

²*Slade v. State*, Del. Supr., No. 45, 1999, Berger, J. (Jan. 24, 2000) (Slade's sole claim on direct appeal was that the Superior Court erred in refusing a plea bargain that he decided to accept during jury selection.)

³The undercover officers testified and a videotape of the drug transactions was shown.

⁴DEL. CODE ANN. tit. 11, § 275 (2001).

Superior Court included an instruction on accomplice liability in its jury instructions.

(4) Slade's first claim is that the Superior Court abused its discretion, first, by amending the indictment to permit the jury to consider whether he acted as an accomplice in one of the drug transactions and, second, by denying his postconviction claim of an improperly amended indictment as procedurally barred⁵ rather than considering it under Rule 61's "miscarriage of justice" exception.⁶ Slade's second claim is that his counsel provided ineffective assistance at trial by failing to investigate the facts, interview witnesses and request a continuance and by failing to raise the claim of an improperly amended indictment on appeal. To the extent Slade has not argued other grounds to support his appeal that were raised previously, those grounds are deemed waived and will not be addressed by this Court.⁷

(5) Slade's claim of abuse of discretion on the part of the Superior Court is without merit. The trial transcript reflects that there was sufficient

⁵SUPER. CT. CRIM. R. 61(i) (3).

⁶SUPER. CT. CRIM. R. 61(i) (5).

⁷*Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his motion for postconviction relief in the Superior Court, Slade also argued that the indictment was defective, there was insufficient evidence presented at trial to sustain his convictions, and the jury instructions were erroneous.

evidence presented at trial to support a charge of accomplice liability against Slade and the Superior Court properly instructed the jury on that charge.⁸ Furthermore, the Superior Court properly found Slade's postconviction claim to be procedurally barred. There was, moreover, no evidence of cause for relief from the procedural default, prejudice from a violation of Slade's rights,⁹ or a miscarriage of justice due to a constitutional violation.¹⁰

(6) Slade's claim that his counsel provided ineffective assistance is also without merit. In order to prevail on this claim, Slade must show that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.¹¹ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."¹² Our review of the record reveals no evidence that any alleged error on the part of Slade's counsel affected the outcome of either his trial or his direct appeal.

⁸DEL. CODE ANN. tit. 11, § 275 (2001); *Dixon v. State*, 673 A.2d 1220, 1228 (Del. 1996).

⁹SUPER. CT. CRIM. R. 61(i) (3) (A) and (B).

¹⁰SUPER. CT. CRIM. R. 61(i) (5).

¹¹*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

¹²*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

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

BY THE COURT:

/s/ Randy J. Holland
Justice