

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES A. MAYS,	§
	§ No. 493, 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. 0006015793
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 9, 2007
Decided: April 24, 2007

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices.

ORDER

This 24th day of April 2007, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, James A. Mays, filed an appeal from the Superior Court's August 28, 2006 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In March 2002, a Superior Court jury found Mays guilty of Attempted Murder in the First Degree, Robbery in the First Degree, two counts of Possession of a Firearm During the Commission of a Felony, and Conspiracy in the Second Degree. On the attempted murder conviction, he

was sentenced to 15 years at Level V. On the robbery conviction, he was sentenced to 10 years at Level V, to be suspended after 5 years for 5 years at Level IV followed by decreasing levels of supervision. On the firearm convictions, he was sentenced to a total of 10 years at Level V, to be suspended after 5 years for 5 years at Level II. On the conspiracy conviction, he was sentenced to 1 year at Level V, to be suspended for 1 year at Level II. This Court affirmed Mays' convictions and sentences on direct appeal.¹

(3) In this appeal, Mays claims that his trial counsel provided ineffective assistance by failing to a) object to the admission of a 911 call to the police and a witness statement given to the police; b) move for the suppression of in-court and out-of-court identifications of him; c) move to suppress, or redact, his statement to the police; d) move to redact the victim's medical records; and e) properly prepare for trial. Mays also claims that, on direct appeal, his counsel failed to raise the claim that the prosecution failed to prove beyond a reasonable doubt that he intended to kill the victim.

(4) In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel's representation fell

¹ *Mays v. State*, Del. Supr., No. 391, 2002, Veasey, C.J. (Jan. 31, 2003).

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.² Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."³ The defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.⁴

(5) Mays has failed to demonstrate that his counsel committed any errors that were prejudicial to him. The tape recording of the 911 call was admissible at trial under the excited utterance exception to the hearsay rule.⁵ The witness' statement to police was admissible at trial as affirmative evidence.⁶ Therefore, any objection by counsel on either of these grounds would have been futile. This Court's ruling on direct appeal that neither the out-of-court photo identification of Mays nor Mays' statement to police prejudiced him forecloses any ineffective assistance claim on either of those grounds.

(6) Mays has failed to cite to any legal authority supporting his claim that his in-court identification was objectionable. In the absence of

² *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

³ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁴ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

⁵ *Warren v. State*, 774 A.2d 246, 251-53 (Del. 2001).

⁶ Del. Code Ann. tit. 11, § 3507.

any evidence that the redaction of certain portions of Mays' statement, or the victim's medical records, would have altered the outcome of his trial, those claims fail as well. Mays' claim that his trial counsel was not prepared for trial was properly denied by the Superior Court as conclusory. While Mays provides a list of specific ways in which he alleges his counsel was unprepared for trial in his instant appeal, he fails to demonstrate how those alleged errors resulted in prejudice to him. As such, this claim is also unavailing.

(7) Mays' final claim is that his counsel provided ineffective assistance by failing to argue on direct appeal that the State's evidence was insufficient to support his conviction of Attempted Murder in the First Degree. The trial transcript reflects that, when Mays shot his pistol, his arm was extended directly towards the victim, who, the ballistic evidence showed, was shot in the neck at close range. Under these circumstances, the evidence was more than sufficient to support Mays' conviction.⁷ Therefore, Mays' counsel did not provide ineffective assistance by not raising the claim on direct appeal.

⁷ Del. Code Ann. tit. 11, §§ 531 and 636(a) (1) (containing the elements of attempted first degree murder); *Barnett v. State*, 691 A.2d 614, 618 (Del. 1997) (in reviewing a claim of insufficiency of the evidence, the relevant inquiry is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt).

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

BY THE COURT:

/s/ Carolyn Berger
Justice