

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |                                 |
|--------------------|---------------------------------|
| VICTOR W. TALMO,   | §                               |
|                    | §                               |
| Defendant Below-   | § No. 493, 2002                 |
| Appellant,         | §                               |
|                    | §                               |
| v.                 | § Court Below—Superior Court    |
|                    | § of the State of Delaware,     |
| STATE OF DELAWARE, | § in and for New Castle County  |
|                    | § Cr.A. Nos. IN96-05-0828;0829; |
| Plaintiff Below-   | § 0831                          |
| Appellee.          | § IN96-06-1695                  |

Submitted: January 10, 2003  
Decided: February 28, 2003

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

**ORDER**

This 28<sup>th</sup> day of February 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Victor W. Talmo, filed an appeal from the Superior Court's July 30, 2002 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 January 1998, Talmo was convicted by a Superior Court jury of Burglary in the Second Degree, Forgery in the Second Degree and two counts of Theft. He was sentenced as an habitual offender to life in prison on

the burglary conviction and to an additional 5 years at Level V on the remaining convictions. Talmo's convictions and sentences were affirmed by this Court on direct appeal.<sup>1</sup>

(3) In this appeal, Talmo claims that his trial counsel provided ineffective assistance by: a) presenting his prior criminal record to the jury; b) failing to investigate his home confinement records to establish an alibi;<sup>2</sup> and c) representing him in spite of a conflict of interest. To the extent Talmo has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court.<sup>3</sup>

(4) In order to prevail on his claim of ineffective assistance of counsel, Talmo 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

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<sup>1</sup>*Talmo v. State*, Del. Supr., No. 205, 1998, Walsh, J. (Jan. 29, 1999).

<sup>2</sup>At the time of the crimes, Talmo was serving a sentence of home confinement in connection with a previous conviction.

<sup>3</sup>*Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his brief in support of his postconviction motion in the Superior Court, Talmo also argued that his counsel failed to present an involuntary intoxication defense, misled him into going to trial rather than accepting the State's plea offer and failed to investigate alibi witnesses.

have been different.<sup>4</sup> Although not insurmountable, the Strickland standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”<sup>5</sup>

(5) Talmo’s first claim is without merit. Because Talmo’s prior convictions involved crimes of dishonesty, they clearly were admissible for impeachment purposes.<sup>6</sup> Once Talmo had decided to testify in his own defense, counsel made the reasonable strategic decision to raise Talmo’s prior record on direct examination rather than wait for the prosecution to raise it on cross examination, thereby bolstering Talmo’s credibility with the jury.

(6) Talmo’s second claim is also without merit because there is no evidence that the presentation of his home confinement records would have assisted his defense. The crimes Talmo was charged with committing took place in other apartments in the apartment complex where he was staying. None of the victims who testified was able to pinpoint exactly when the stolen items disappeared from their apartments. Because, as he himself testified, Talmo moved freely within the apartment complex during the time he was on

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<sup>4</sup>*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>5</sup>*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

<sup>6</sup>DEL. R. EVID. 609(a) (2).

home confinement, the home confinement records would not have provided Talmo with an alibi and would not have influenced the outcome of the trial.

(7) Equally without merit is Talmo's final claim that a conflict of interest prevented his counsel from providing him a vigorous defense. Talmo himself created the alleged conflict by filing a legal malpractice complaint against his counsel shortly before trial. Talmo's counsel represented to the Superior Court that the malpractice claim would not affect his ability to provide a vigorous defense<sup>7</sup> and, indeed, there is nothing in the record indicating that the lawsuit either affected counsel's performance or changed the outcome of the trial.

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

BY THE COURT:

s/ Joseph T. Walsh  
Justice

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<sup>7</sup>*Woods v. State*, Del. Supr., No. 166, 1995, Walsh, J. (Nov. 12, 1996) (the mere filing of a complaint against counsel would not, without more, require counsel to withdraw his representation.)