

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DASHAWN BROOKS,	§
	§ No. 586, 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. 0203008352A
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 11, 2007

Decided: July 10, 2007

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

**ORDER**

This 10<sup>th</sup> day of July 2007, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Dashawn Brooks, filed an appeal from the Superior Court's October 26, 2006 order denying his postconviction motion pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) In March 2003, Brooks was found guilty by a Superior Court jury of Murder in the Second Degree, Possession of a Firearm During the Commission of a Felony, and Conspiracy in the Second Degree. He was

sentenced to a total of 20 years of Level V incarceration. Brooks' convictions and sentences were affirmed by this Court on direct appeal.<sup>1</sup>

(3) In this appeal, Brooks claims that his counsel provided ineffective assistance by failing to: a) move for a directed verdict on the conspiracy charge on the ground that one of the State's witnesses testified that there was no agreement to murder the victim; b) investigate the jurors' possible knowledge of a newspaper article about Brooks; and c) properly investigate Brooks' criminal history in connection with his sentencing.

(4) 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 his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.<sup>2</sup> Although not insurmountable, the *Strickland* standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."<sup>3</sup> The defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.<sup>4</sup>

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<sup>1</sup> *Brooks v. State*, Del. Supr., No. 310, 2003, Berger, J. (Aug. 16, 2004).

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

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

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

(5) As to Brooks' ineffectiveness claims, the record reflects that Brooks' co-defendant, Charles White, gave testimony supporting the conspiracy charge. Thus, Brooks' counsel acted reasonably in not moving for a directed verdict on that charge. The record also reflects that the trial judge instructed the jury on the newspaper article. Brooks' counsel acted reasonably in relying on that instruction to mitigate any potential prejudice to Brooks. Finally, the record reflects that, at sentencing, Brooks' counsel misspoke concerning the number of Brooks' prior felony offenses. However, he also argued that the mitigating factors in Brooks' history warranted nothing more than the minimum mandatory sentence. There is no evidence that the judge sentenced Brooks improperly as a result of his counsel's misstatement. We, thus, conclude that Brooks' has not demonstrated that any error on the part of his counsel resulted in prejudice to him.

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

BY THE COURT:

/s/Henry duPont Ridgely  
Justice