

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALPHONSO NICKERSON,	§
	§
Defendant Below-	§ No. 54, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. Nos. IK97-07-0097 thru
Plaintiff Below-	§ 0100
Appellee.	§

Submitted: March 25, 2003
Decided: May 12, 2003

Before **HOLLAND, BERGER** and **STEELE**, Justices

ORDER

This 12th day of May 2003, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Alphonso Nickerson, filed an appeal from the Superior Court's January 28, 2003 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of

¹The Superior Court adopted the commissioner's proposed findings and recommendation dated October 4, 2002. DEL. CODE ANN. tit. 10, § 512(b) (1999); SUPER. CT. CRIM. R. 62.

the Superior Court on the ground that it is manifest on the face of Nickerson's opening brief that the appeal is without merit.² We agree and AFFIRM.

(2) In October 1997, Nickerson was found guilty by a Superior Court jury of Possession of a Deadly Weapon During the Commission of a Felony, Assault in the Third Degree, Aggravated Menacing, and Criminal Trespass in the First Degree. He was sentenced as an habitual offender³ to a total of 27 years incarceration at Level V, to be suspended after 25 years for decreasing levels of probation. This Court affirmed Nickerson's convictions and sentences on direct appeal.⁴

(3) In this appeal, Nickerson claims that: a) the Superior Court erred by not conducting a hearing on his motion to dismiss his trial counsel; and b) his counsel was ineffective for failing to provide trial transcripts for the postconviction proceedings, failing to object to the sentences imposed by the Superior Court,⁵ and failing to object to perjured testimony from the victim.

²SUPR. CT. R. 25(a).

³DEL. CODE ANN. tit. 11, § 4214(a).

⁴*Nickerson v. State*, Del. Supr., No. 132, 1998, Walsh, J. (Mar. 11, 1999).

⁵Nickerson claims that he should not have been sentenced as an habitual offender and that his sentences violate double jeopardy.

(4) Nickerson's first claim is barred as procedurally defaulted because it was not raised as a claim in his direct appeal.⁶ Moreover, Nickerson has not demonstrated cause for relief from the procedural default and prejudice from a violation of his rights.⁷

(5) In order to prevail on his claims of ineffective assistance of counsel, Nickerson 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 have been different.⁸ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁹

(6) Nickerson's claims of ineffective assistance of counsel are unavailing. Nickerson has provided no legal support for his claim that his counsel had an obligation to provide him with trial transcripts to pursue

⁶SUPER. CT. CRIM. R. 61(i) (3).

⁷SUPER. CT. CRIM. R. 61(i) (3) (A) and (B).

⁸*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁹*Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

postconviction relief¹⁰ and has provided no evidence of prejudice as a result of counsel's failure to do so. The transcript of the Superior Court's lengthy hearing on Nickerson's habitual offender status¹¹ reveals no error on the part of counsel that resulted in prejudice to Nickerson. Because there is no merit to Nickerson's claim of a double jeopardy violation,¹² his counsel had no obligation to object to his sentences on that basis. Nickerson, finally, has provided no factual or legal support for his claim that his counsel should have objected to the testimony of the victim concerning her injuries,¹³ nor has he demonstrated any prejudice as a result of his counsel's failure to do so.

(7) It is manifest on the face of Nickerson's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

¹⁰*Pennsylvania v. Finley*, 481 U.S. 551, 554 (1987) (There is no constitutional right to counsel in order to pursue postconviction relief).

¹¹The hearing took place on February 25, 1998.

¹²This Court previously ruled that there was no legal merit to that claim. *Nickerson v. State*, Del. Supr., No. 35, 2000, Holland, J. (Mar. 27, 2000).

¹³It is for the jury as the trier of fact to weigh the credibility of witnesses. *Knight v. State*, 690 A.2d 929, 932 (Del. 1996).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice