

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SAMUEL LAYTON,	§	
	§	No. 55, 2007
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID. No.0205011859
Appellee.	§	

Submitted: June 13, 2007
Decided: September 7, 2007

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

ORDER

This 7th day of September, 2007, on consideration of the briefs of the parties, it appears to the Court that:

1) Samuel Layton appeals the Superior Court’s denial of his motion for postconviction relief. He argues that the trial court erred by refusing to schedule an evidentiary hearing and by denying his claim of ineffective assistance of counsel. We conclude that these arguments lack merit, and affirm.

2) In 2002, Layton was convicted of multiple counts of first degree rape, second degree unlawful sexual contact, and related offenses. He was sentenced to 72

years at Level V, followed by probation. On direct appeal, this Court affirmed his convictions and sentence.¹

3) In his postconviction motion, Layton alleged that his trial counsel failed to investigate, or exploit at trial, the relationship between the victims' mother, Virginia Lewis,² and the Georgetown police officers who investigated the crimes. Lewis knew Mark Atwell, one of the investigating officers, and had been married to Randy Lewis, another Georgetown police officer. In addition, Amaris Brandewie, one of the witnesses at trial, is Atwell's step-daughter.

4) At the trial court's instruction, Layton's former counsel submitted an affidavit responding to Layton's allegations. The affidavit states that counsel was aware of Lewis's relationship with the police officers and, after speaking with another police officer, counsel was satisfied that there was nothing improper or inappropriate about the way the police developed their case against Layton.

5) Layton has presented no evidence, either to the trial court or to this Court, to support his theory that anyone was biased against him. In this appeal, he argues only that the trial court abused its discretion by failing to hold an evidentiary hearing to develop the issue. We disagree. The trial court obtained counsel's affidavit and

¹*Layton v. State*, 2003 WL 22001181 (Del.Supr.).

²We continue to use the pseudonyms provided for Layton's direct appeal.

was satisfied that counsel properly considered and investigated the possibility of witness bias. Thus, the trial court acted within its discretion in deciding that an evidentiary hearing was not required.³

6) Layton also argues that his counsel was ineffective in pursuing the legal claim that his conduct amounted to sexual extortion⁴ rather than rape⁵. Layton says that at trial, his counsel should have asked the court to instruct the jury on sexual extortion as a lesser included offense; and on appeal, his counsel should have made a better argument for the proposition that the sexual extortion statute superceded the rape statute.

7) This Court considered and rejected Layton's legal claim in the direct appeal.⁶ Thus, it is procedurally barred under Super. Ct. Crim. R. 61(i)(4). As for the failure to request a lesser included offense instruction, Layton has made no showing of prejudice⁷. A lesser included offense instruction is warranted only if there is "a rational basis in the evidence for a verdict acquitting the defendant of the charged

³*Pennewell v. State*, 2005 WL 578444 at *2 (Del. Supr.).

⁴11 *Del.C.* § 776.

⁵11 *Del.C.* § 773.

⁶*Layton v. State*, 2003 WL 22001181 at *2 (Del. Supr.).

⁷*Wilson v. State*, 834 A.2d 68, 72 (Del. 2003), citing *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

offense and convicting him of the included offense.”⁸ Layton was charged with rape based on his having had sexual intercourse with children under the age of twelve. Because the rape charges were predicated on the age of the victims, there would be no basis on which to acquit Layton of rape and convict him of sexual extortion. Thus, Layton was not prejudiced by his counsel’s failure to request the instruction.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁸*Lopez v. State*, 2006 WL 3759398 at *3 (Del. Supr.).