

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEMERRIS WALKER,	§
	§
Defendant Below-	§ No. 19, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0203014277
Plaintiff Below-	§
Appellee.	§

Submitted: July 13, 2007
Decided: September 20, 2007

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

ORDER

This 20th day of September 2007, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Demerris Walker, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. We find no merit to the appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that a Superior Court jury convicted Walker of three counts of second degree rape and one count each of first degree burglary, attempted first degree robbery, theft of a senior, and second degree

conspiracy. This Court affirmed Walker's convictions on appeal.¹ Walker filed his first petition for postconviction relief in September 2006, which the Superior Court denied. This appeal followed.

(3) Walker raises four issues in his opening brief on appeal.² He asserts that: (i) the Superior Court erred in failing to disqualify a biased juror; (ii) his trial counsel was ineffective for failing to have a hair tested; (iii) the Superior Court erred in allowing the admission of certain "illegal" evidence; and (iv) the Superior Court erred in allowing the prosecution to use perjured testimony.

(4) This Court reviews the Superior Court's denial of a motion for postconviction relief for abuse of discretion.³ We will consider the procedural bars of Superior Court Criminal Rule 61(i) before considering the merits of any underlying claim.⁴ In this case, the Superior Court concluded that Walker's claims regarding the admission of "illegal" evidence and the admission of perjured testimony were procedurally barred by Rule 61(i)(3)⁵

¹ *Walker v. State*, 2003 WL 22998847 (Del. Dec. 18, 2003).

² Walker raised additional claims in his Superior Court petition. Having failed to raise those additional issues in his opening brief on appeal, the Court deems those claims to be waived. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

³ *Outten v. State*, 720 A.2d 547, 551 (Del. 1998).

⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁵ Del. Super. Ct. Crim. R. 61(i)(3) provides that "[a]ny ground for relief that was not asserted in the proceedings leading to the judgment of conviction...is thereafter barred" unless the petitioner can establish cause and prejudice.

and that Walker had failed to establish cause or prejudice in order to overcome the procedural hurdle. We find no abuse of the Superior Court's discretion is finding these claims procedurally barred.

(5) Furthermore, Walker's claim of juror bias was raised and rejected by the Superior Court at trial. He did not argue this issue in his direct appeal. To the extent the Superior Court already rejected his argument, we do not find that the interests of justice warrant reconsideration of this previously adjudicated claim.⁶ Moreover, having failed to raise it as an issue on appeal, Walker has waived his right to have this Court consider it now for the first time, absent a showing of cause for his failure to raise it on direct appeal and actual prejudice.⁷ Walker has failed to establish either. Accordingly, we find his claim of juror bias also to be procedurally barred.

(6) With respect to his claim of ineffective assistance of counsel, Walker was required to establish: (a) that his defense counsel's representation fell below an objective standard of reasonableness; and (b) that, but for counsel's unprofessional errors, there is a reasonable probability

⁶ See Super. Ct. Crim. R. 61(i)(4), which holds that any postconviction claim that was previously adjudicated is thereafter barred unless reconsideration is warranted in the interest of justice.

⁷ *Oney v. State*, 482 A.2d 756, 758 (Del. 1984).

that the outcome of the case would have been different.⁸ There is a strong presumption that counsel's conduct was professionally reasonable.⁹

(7) In this case, the Superior Court concluded defense counsel's failure to have a hair tested for DNA evidence did not fall below an objective standard of reasonableness. As the Superior Court pointed out, the codefendant's testimony against Walker on the rape charges established that Walker had used a condom in digitally penetrating the victim. Accordingly, testing on the hair recovered from the victim would not have provided any basis to contradict the testimony establishing the rape. We agree with the Superior Court's analysis. Accordingly, we find that the Superior Court did not abuse its discretion in denying Walker's claim of ineffective assistance of counsel.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

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

⁹ *Albury v. State*, 551 A.2d 53, 59 (Del. 1988).