

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARTEL HOPKINS,	§
	§ No. 250, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0402002032
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 27, 2007  
Decided: November 15, 2007

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 15<sup>th</sup> day of November 2007, 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, Artel Hopkins, filed an appeal from the Superior Court's April 27, 2007 order denying Hopkins' motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Hopkins' opening brief that the appeal is without merit. We agree and affirm.

(2) In 2004, a Superior Court jury found Hopkins guilty of Trafficking in Cocaine, Possession with Intent to Deliver Cocaine, Maintaining a Building for Keeping Controlled Substances, Conspiracy in the Second Degree, and Possession of Drug Paraphernalia. He was sentenced to a total of 41 years at Level V, to be suspended after 18 years for decreasing levels of supervision. Hopkins' convictions and sentences were affirmed by this Court on direct appeal.<sup>1</sup>

(3) In this appeal, Hopkins claims that: a) the constitutional principle of separation of powers was violated when the Superior Court granted the State's motion to release cocaine seized in another case for use in the undercover sting operation that resulted in Hopkins' arrest, and, at trial, permitted the prosecutor to question a police detective about the origin of the cocaine; and b) certain remarks made by the prosecutor in his closing argument impermissibly infringed on Hopkins' constitutional right not to testify.

(4) Hopkins first claims that there was a violation of the constitutional doctrine of separation of powers. Because the claim was raised neither at trial nor in his direct appeal, it is procedurally defaulted.<sup>2</sup> However, Hopkins argues that a miscarriage of justice occurred due to the

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<sup>1</sup> *Hopkins v. State*, 893 A.2d 922 (Del. 2006).

<sup>2</sup> Super. Ct. Crim. R. 61(i) (3).

constitutional violation and due to his counsel's ineffective assistance in failing to object to it, which overcomes the procedural bar.<sup>3</sup>

(5) The separation of powers doctrine forbids one branch of government from exercising powers properly belonging to another branch.<sup>4</sup> In this case, the Superior Court granted the State's motion for release of cocaine evidence from another case for use in the undercover sting operation that led to Hopkins' arrest. Subsequently, during the trial, a police detective involved in the sting operation explained, under questioning by the prosecutor and without objection from defense counsel, how the cocaine used in the operation had been obtained. There is no evidence in this case that one branch of government attempted to exercise the powers properly belonging to another branch. As such, the separation of powers doctrine is not implicated.

(6) In order to prevail on his claim of ineffective assistance of counsel, Hopkins must demonstrate that his trial 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 his trial would have been different.<sup>5</sup> Although not insurmountable, the

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<sup>3</sup> Super. Ct. Crim. R. 61(i) (5).

<sup>4</sup> 16A Am. Jur. 2d, Constitutional Law, § 246.

<sup>5</sup> *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

Strickland standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”<sup>6</sup> Hopkins’ ineffectiveness claim fails because he has not demonstrated that he was prejudiced by any alleged error on the part of his counsel. Thus, for all of the above reasons, we conclude that Hopkins’ first claim is unavailing.

(7) Hopkins’ second claim is that his constitutional right not to testify was infringed. The basis for the claim is the prosecutor’s statement in closing argument that “. . . you may have more faith in a process when poker is played with the cards up and they are all on the table than when some of them are kept concealed underneath the table and only a few are placed up for you to view.” Like Hopkins’ first claim, this claim is procedurally defaulted because it was raised neither at trial nor on direct appeal.<sup>7</sup> However, Hopkins argues that the constitutional violation overcomes the procedural bar.<sup>8</sup>

(8) The record does not support Hopkins’ interpretation of the prosecutor’s statement as an infringement on his constitutional right not to testify, however. Rather, the statement more reasonably refers to the quantity of evidence against Hopkins presented by the State. As such, the

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<sup>6</sup> *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

<sup>7</sup> Super. Ct. Crim. R. 61(i) (3).

<sup>8</sup> Super. Ct. Crim. R. 61(i) (5).

claim is without merit. Moreover, as with his first claim, Hopkins' argument that his counsel erred by failing to object to the prosecutor's statement is without merit because the statement was not objectionable. We conclude, therefore, that Hopkins' second claim also is unavailing.

(9) It is manifest on the face of Hopkins' opening brief that his 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, there was no abuse of discretion.

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/ Jack B. Jacobs  
Justice