

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

v.

CLEVELAND A. BALDWIN,

Defendant.

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I.D. No. 1308009488A

Submitted: September 29, 2016

Decided: October 6th, 2016

Upon Defendant's Motion for Postconviction Relief

SUMMARILY DISMISSED.

ORDER

Cleveland Baldwin, *pro se*, Wilmington, DE.

Daniel McBride, Esquire, Deputy Attorney General, Department of Justice, 820 N. French St., Wilmington, Delaware, Attorney for the State.

WHARTON, J.

This 6th day of October, 2016, upon consideration of Defendant's timely first Motion for Post-conviction Relief and the record in this matter, it appears to the Court that:

1. Defendant Cleveland A. Baldwin ("Baldwin") was indicted by the Grand Jury on the charges of Assault First Degree, Possession of a Deadly Weapon During the Commission of a Felony ("PDWDCF"), Conspiracy Second Degree, Possession of a Deadly Weapon by a Person Prohibited ("PDWBPP"), and Carrying a Concealed Deadly Weapon ("CCDW").¹ The PDWBPP charge was severed when the case went to trial.² After a jury trial, Baldwin was found guilty of all of the remaining charges.³ He was sentenced to a total of eight years of incarceration suspended after four years of mandatory incarceration, followed by decreasing levels of supervision.⁴ Baldwin appealed to the Delaware Supreme Court which affirmed his convictions on December 1, 2015.⁵ He then filed this Motion for Postconviction Relief ("Motion") on September 29, 2016.⁶

2. The Motion raises four claims: (1) that Baldwin was denied his right to confront a witness; 2) that the State's evidence was insufficient to meet its burden of

¹ D.I. 4.

² Transcript, October 29, 2014 at 3-5.

³ D.I. 34.

⁴ D.I. 43.

⁵ *Baldwin v. State*, 2015 WL 7756857 (Del. 2015).

⁶ D.I. 52.

proof; (3) that his trial counsel was ineffective; and (4) that the Court erred in not striking a portion of a witness' testimony.⁷

3. Under Delaware Superior Court Rules of Criminal Procedure, a motion for post-conviction relief can be barred for time limitations, repetitive motions, procedural defaults, and former adjudications. A motion exceeds time limitations if it is filed more than one year after the conviction becomes final or if it asserts a newly recognized, retroactively applied right more than one year after it was first recognized.⁸ A motion is considered repetitive and therefore barred if it asserts any ground for relief "not asserted in a prior post-conviction proceeding."⁹ Repetitive motions are only considered if it is "warranted in the interest of justice."¹⁰ Grounds for relief "not asserted in the proceedings leading to the judgment of conviction" are barred as procedurally defaulted unless the movant can show "cause for relief" and "prejudice from [the] violation."¹¹ Grounds for relief formerly adjudicated in the case, including "proceedings leading to the judgment of conviction, in an appeal, in a post-conviction proceeding, or in a federal habeas corpus hearing" are barred.¹² Former adjudications are only reconsidered if "warranted in the interest of justice."¹³

4. Before addressing the merits of Defendant's Motion for Post-conviction Relief, the Court must first apply the procedural bars of Superior Court Criminal

⁷ *Id.*

⁸ Super. Ct. Crim. R. 61(i)(1).

⁹ Super. Ct. Crim. R. 61(i)(2).

¹⁰ *Id.*

¹¹ Super. Ct. Crim. R. 61(i)(3).

¹² Super. Ct. Crim. R. 61(i)(4).

¹³ *Id.*

Rule 61(i).¹⁴ If a procedural bar exists, then the Court will not consider the merits of the post-conviction claim.¹⁵ If it plainly appears from the motion and the record in the case that the movant is not entitled to relief, the Court may summarily dismiss the motion.¹⁶

5. In applying the procedural bars of Rule 61(i), it appears that the Motion is a timely first motion for postconviction relief alleging ineffective assistance of counsel in Ground Three, a claim that Baldwin could not raise previously. His first two claims alleging that he was denied his right to confront a witness and that the State failed to meet its burden of proof were not raised in the proceedings leading to Baldwin's conviction or on appeal. Those claims ordinarily would be barred, but for the fact that Baldwin alleges that they were not raised because counsel failed to do so. Accordingly, the Court will consider them in the context of an ineffective assistance of counsel claim. Baldwin offers no such explanation for the failure to raise his fourth claim concerning the Court's alleged error in not striking a portion of a witness' testimony. That claim is procedurally defaulted and barred by Rule 61(i)(3).¹⁷

6. To successfully bring an ineffective assistance of counsel claim, a claimant must demonstrate: (1) that counsel's performance was deficient; and (2)

¹⁴ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹⁵ *Id.*

¹⁶ Super. Ct. Crim. R. 61(d)(5).

¹⁷ Even if the claim were not barred, it would fail nonetheless for lack of specificity. The allegation fails to identify either the witness whose testimony Baldwin claims should have been stricken or the specific testimony.

that the deficiencies prejudiced the claimant by depriving him or her of a fair trial with reliable results.¹⁸ To prove counsel's deficiency, a defendant must show that counsel's representation fell below an objective standard of reasonableness.¹⁹ Moreover, a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.²⁰ "[A] court must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."²¹ A successful Sixth Amendment claim of ineffective assistance of counsel requires a showing "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."²² An inmate must satisfy the proof requirements of both prongs to succeed on an ineffective assistance of counsel claim. Failure to do so on either prong will doom the claim and the Court need not address the other.²³ All three of Baldwin's ineffective assistance of counsel claims fail both the performance and prejudice prongs of *Strickland*.

7. First, Baldwin claims that trial counsel, who was also appellate counsel, failed to raise, either at trial or on appeal, his claim that he was denied his right to confront a witness against him because the "victim's testimony heavily inferred Mr.

¹⁸ *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

¹⁹ *Id.* at 667-68.

²⁰ *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

²¹ *Strickland*, 446 U.S. at 689.

²² *Id.* at 694.

²³ *Strickland*, 466 U.S. at 697; *Ploof v. State*, 75 A.3d 811, 825 (Del. 2013) ("Strickland is a two-pronged test, and there is no need to examine whether an attorney performed deficiently if the deficiency did not prejudice the defendant.").

Jesse H. Graham and actions of him which Defendant's counsel should have been able to cross examine."²⁴ The Court has carefully reviewed the testimony of the victim, Orlando Goode, Jr., for references to Mr. Goode's employer, Jesse H. Graham, who was not a witness at trial. Nearly all of the references to Mr. Graham were elicited by Baldwin's trial counsel. While there was testimony from Mr. Goode about things that Mr. Graham did in Mr. Goode's presence, there was no testimony about anything that Mr. Graham said that would constitute hearsay testimony or in any way implicated Baldwin's right to confront witnesses against him. Additionally, Baldwin has failed to identify how counsel's failure to raise a confrontation issue prejudiced him. Clearly, there was no deprivation of Baldwin's confrontation rights, and hence no prejudice to him from counsel's failure to raise the issue.

8. Next, Baldwin alleges that the evidence was insufficient to find him guilty. In order to succeed on this claim in the context of an ineffective assistance of counsel claim, Baldwin must show that either a motion for judgment of acquittal at trial or an insufficiency of the evidence argument on appeal would have succeeded. In deciding whether to grant a motion for judgment of acquittal, this Court "must consider the evidence and all legitimately drawn inferences from the point of view most favorable to the state"²⁵ in order to determine "whether *any*

²⁴ D.I. 52.

²⁵ *Vouras v. State*, 452 A.2d 1165, 1169 (Del. 1982).

rational trier of fact...could find [a] defendant guilty beyond a reasonable doubt.”²⁶

“In making this determination, [t]he fact that most of the State’s case [is] circumstantial is irrelevant; the Court does not distinguish between direct and circumstantial evidence.”²⁷ On appeal the Delaware Supreme Court applies the same test.²⁸ In support of his contention, Baldwin offers only, “...witness was not credible and gave conflicted testimony.”²⁹ Clearly, issues of credibility are for the jury to decide. A motion for judgment of acquittal based on witness credibility necessarily would have failed since, in deciding such a motion the Court would have been required to view the evidence in the light most favorable to the State. In other words the Court would have resolved credibility issues in favor of the State. An insufficiency of the evidence argument raised on appeal would have failed for the same reason. Failure to raise an issue that has no merit is not a performance deficiency. On this issue, Baldwin has failed to meet either the performance or prejudice prong of *Strickland*.

9. Finally, Baldwin alleges that trial counsel was ineffective because he failed to obtain expert DNA and fingerprint examinations of the pipe used to assault Mr. Goode.³⁰ Had trial counsel done so Baldwin claims, the resulting negative conclusions would have caused the pipe to be suppressed.³¹ This

²⁶ *Monroe v. State*, 652 A.2d 560, 563 (Del. 1995).

²⁷ *Id.*

²⁸ *Id.*

²⁹ D.I. 52.

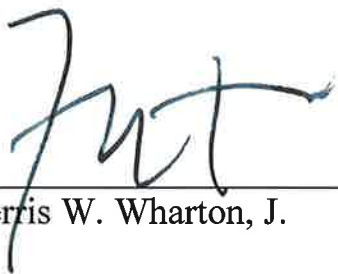
³⁰ *Id.*

³¹ *Id.*

argument fails for two reasons. First, Baldwin has not established that the results would have been exculpatory, and, second and more importantly, the absence of Baldwin's DNA or fingerprints on the pipe would not have provided a legal basis for suppression. Again on this issue, Baldwin has failed to meet either *Strickland's* performance or prejudice prong.

Therefore, since it plainly appears from Baldwin's Motion for Postconviction Relief and the record in this case that Baldwin is not entitled to relief, the Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.



Ferris W. Wharton, J.

oc: Prothonotary
cc: Investigative Services