

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHAWN BUNTING,	§
	§ No. 138, 2011
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0407024013
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 29, 2011
Decided: August 30, 2011

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

ORDER

This 30th day of August 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Shawn Bunting, filed an appeal from the Superior Court’s February 21, 2011 order adopting the Commissioner’s January 18, 2011 report, which recommended that Bunting’s second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, in July 2004, Bunting was arrested on numerous drug charges. Prior to trial, Bunting moved to suppress the drug

¹ Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

evidence seized from his residence. Following a hearing, the Superior Court denied the motion. After a four-day jury trial in Superior Court, Bunting moved for a partial judgment of acquittal. The Superior Court also denied that motion.

(3) Bunting was found guilty of Possession With Intent to Deliver Marijuana, Maintaining a Dwelling for Keeping Controlled Substances, Maintaining a Vehicle for Keeping Controlled Substances, Possession of Drug Paraphernalia and Driving While License Suspended or Revoked.² He was sentenced as a habitual offender to life in prison. This Court affirmed Bunting's convictions on direct appeal.³ The Superior Court also denied Bunting's first postconviction motion. His appeal to this Court was dismissed.⁴

(4) In this appeal from the Superior Court's denial of his second postconviction motion, Bunting claims that a) his counsel provided ineffective assistance by failing to interview the passenger of the car he was driving when arrested and object to the inadmissible testimony of a police officer; b) his Sixth Amendment right to confront his accusers was violated; c) the Fourth Amendment prohibition against unlawful searches and seizures was violated with respect to both his car and residence; and d) the Superior Court should have considered the

² Bunting was found not guilty of Possession of Cocaine.

³ *Bunting v. State*, Del. Supr., No. 224, 2005, Ridgely, J. (Sept. 7, 2006).

⁴ *Bunting v. State*, Del. Supr., No. 117, 2008, Berger, J. (July 23, 2008).

merits of his claims under Rule 61(i) (5) because all of his claims involve violations of his constitutional rights.

(5) When considering a motion for postconviction relief, the Superior Court must first determine whether the defendant has met the procedural requirements of Rule 61 before considering the merits of the defendant's claims.⁵ Under Rule 61(i) (1), a claim for postconviction relief must be brought within one year of the defendant's conviction becoming final. In this case, Bunting filed his second postconviction motion more than three years after his conviction became final.⁶ As such, the Superior Court properly determined that Bunting's second postconviction motion was time-barred under Rule 61(i) (1).

(6) The Superior Court also properly determined that Bunting's claims were procedurally barred under Rule 61(i) (2), (3) and (4). Because none of Bunting's claims was asserted in his previous postconviction motion, he is barred from asserting them in this proceeding under Rule 61(i) (2). Bunting's claim that his Sixth Amendment rights were violated and that his Fourth Amendment rights were violated with respect to the police search of his car were not raised in the proceedings leading to the judgment of conviction and, therefore, are barred as procedurally defaulted under Rule 61(i) (3). His claim that his Fourth Amendment

⁵ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁶ Super. Ct. Crim. R. 61(m).

rights were violated with respect to the police search of his residence is barred under Rule 61(i) (4) because it was formerly adjudicated on direct appeal.

(7) Bunting's final claim is that, because his attorney provided ineffective assistance that resulted in violations of his constitutional rights and because the remainder of his claims implicate his constitutional rights, the Superior Court should have reached the merits of his claims under Rule 61(i) (5), which overcomes the time and procedural bars in cases of constitutional violations that result in "a miscarriage of justice."

(8) In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that his 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 the proceedings would have been different.⁷ Although not insurmountable, the Strickland standard is highly demanding and leads to a strong presumption that the representation was professionally reasonable.⁸ The defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.⁹

(9) Bunting's claim that his counsel provided ineffective assistance by failing to interview the passenger of the car he was driving when arrested and

⁷ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁸ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁹ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

object to testimony given by a police officer is factually and legally baseless. The record reflects that Bunting's counsel interviewed the passenger of the car Bunting was driving when arrested. The record also reflects that she testified that Bunting was in control of the vehicle at the time of his arrest and that the drugs found there belonged to him. There was, moreover, nothing improper about the police officer's testimony at trial, since he was the one who prepared the police report.

(10) Because there is no merit to Bunting's claim of ineffective assistance of counsel, that claim provides Bunting with no basis for overcoming Rule 61's time and procedural bars pursuant to Rule 61(i) (5). Likewise, his conclusory allegations of constitutional violations do not serve to overcome Rule 61's time and procedural bars. The record in this case does not reflect any constitutional violations resulting in a "manifest injustice." As such, the Superior Court properly applied the time and procedural bars to deny Buntings' claims.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice