

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAEMONT L. WHEELER,	§
	§
Defendant Below-	§ No. 555, 2013
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0911008949
Plaintiff Below-	§
Appellee.	§

Submitted: November 20, 2013

Decided: January 2, 2014

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

ORDER

This 2nd day of January 2014, upon consideration of the opening brief, the State’s motion to affirm, and the record on appeal, it appears to the Court that:

(1) The defendant-appellant, Daemont Wheeler, filed this appeal from the Superior Court’s denial of his first motion for postconviction relief. A Superior Court jury found Wheeler guilty in April 2011 of Attempted Murder in the First Degree and multiple weapon offenses. The Superior Court sentenced Wheeler as a habitual offender to life imprisonment plus an

additional term of thirty-eight years. This Court affirmed Wheeler's convictions and sentence on direct appeal.¹

(2) Wheeler filed a timely motion for postconviction relief in December 2012, alleging among other things that his trial and appellate counsel both provided constitutionally ineffective assistance. A Superior Court Commissioner denied Wheeler's motion for appointment of counsel. After obtaining responses from Wheeler's trial and appellate counsel as well as from the State, the Commissioner issued a report recommending that Wheeler's motion be denied. The Superior Court adopted the Commissioner's report and recommendation. This appeal followed.

(3) After careful consideration of the parties' respective positions on appeal, we conclude that the Superior Court abused its discretion in denying Wheeler's motion for the appointment of counsel to represent him in pursuing his claims of ineffective assistance of counsel in his first postconviction motion. Accordingly, we vacate the judgment of the Superior Court without addressing the merits of the decision. This matter shall be remanded to the Superior Court for the appointment of counsel to represent Wheeler in pursuing his first postconviction motion.

¹ *Wheeler v. State*, 36 A.3d 310 (Del. 2012).

NOW, THEREFORE, IT IS ORDERED that the Superior Court's order dated October 3, 2013 is hereby VACATED. This matter is REMANDED to the Superior Court for further proceedings consistent with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice