



IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAMAZAN SAHIN	:	
Defendant Below-	:	
Appellant,	:	
	:	
v.	:	No. 357, 2012
	:	
STATE OF DELAWARE,	:	
Appellee.	:	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
ID No. 0710019209

APPELLANT'S REPLY BRIEF

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ARGUMENT

I. THE DEFENDANT'S SIXTH AMENDMENT RIGHT TO COUNSEL WAS VIOLATED WHEN IT BECAME APPARENT THAT THERE WAS A FUNDAMENTAL CONFLICT BETWEEN THE DEFENDANT AND HIS ATTORNEY CONCERNING THE DECISION TO PROCEED TO TRIAL RATHER THAN PLEAD GUILTY. DEFENSE COUNSEL UNDERMINED THE DEFENDANT'S CHOICE TO HAVE A TRIAL BY MAKING PREJUDICIAL STATEMENTS TO THE COURT CONCERNING THE DEFENDANT'S CHARACTER AND CREDIBILITY

The sole issue presented in this Argument section is whether the impact of the errors committed by trial counsel should be judged under the well established "prejudice" formulation adopted in *Strickland*,¹ or whether the Court should conclude that the errors warrant application of the exception to *Strickland* established in *Cronic*,² where "prejudice" is presumed to exist.³ At the outset, it should be noted that the defendant agrees with the State that if this case is subjected to an analysis under *Strickland's* "prejudice" component, then the defendant cannot establish "prejudice." Therefore, the arguments set forth herein will focus on why this Court should conclude that this case is governed by *Cronic* rather than by *Strickland*.

In deciding whether *Cronic* or *Strickland* is applicable to the errors committed by trial counsel, this Court does not write on a clean slate. This same issue was recently examined by this Court in *Cooke v. State*, 977 A.2d 803 (Del. 2009). The approach and analysis employed by the majority in *Cooke* is instructive, if not controlling, here because the majority opinion in *Cooke* addresses and refutes virtually all of the arguments made by the State in this case as to why *Strickland*, rather than *Cronic*, should apply.

¹ *Strickland v. Washington*, 466 U.S. 668 (1984).

² *United States v. Cronic*, 466 U.S. 648 (1984).

³ In its Brief, the State concedes that trial counsel's performance was "deficient" under *Strickland*. (Answering Brief, p. 13).

First, the State argues that *Cronic* is inapplicable because trial counsel's overall performance "could hardly be described as a complete failure or breakdown in the adversarial system." (Answering Brief, p. 16). The State's argument mirrors the argument that was made by the dissenters in *Cooke* - an argument that was squarely rejected by the majority. The dissenters in *Cooke* argued that *Strickland* rather than *Cronic* should apply because "*Cronic* applies only where counsel does **nothing or next to nothing** to discharge his duty to present a vigorous defense⁴...The majority errs by focusing on counsel's obligation to acquiesce in Cooke's objective, rather than on whether Cooke received a fair trial with reasonably effective assistance of counsel that produced a 'just result.'⁵ The dissent also emphasized:

Cooke's counsel actively engaged in the pretrial and trial proceedings. They were never absent at any stage of the trial. Cooke not only had access to counsel but also had the discretion to make key decisions at critical stages of the trial. To reiterate: Cooke pleaded not guilty, testified, his counsel cross examined witnesses against him where advantageous⁶...Nowhere does the Majority even suggest that a new trial where counsel blindly follows Cooke's irrational position would produce a more 'just' outcome...⁷

In rejecting the above arguments, the majority in *Cooke* focused on whether the errors made by defense counsel created a "structural defect" that infected the entire trial, irrespective of counsel's overall performance, and irrespective of whether the eventual outcome might not have been different. *Id.*, at 849-850. According to the majority, the existence of "structural defects" in Cooke's trial trumped the

⁴ *Cooke*, 977 A.2d at 860 (Steele, C.J. and Jacobs, J., dissenting).

⁵ *Id.*, at 866

⁶ *Id.*, at 862.

⁷ *Id.*, at 866.

dissenters' arguments that the outcome was "just," given the "overwhelming" evidence that Cooke was guilty:

The Dissent describes the evidence as "overwhelming" but "[w]hether a man is innocent cannot be determined from a trial in which ...denial of counsel has made it impossible to conclude, with any satisfactory degree of certainty, that the defendant's case was adequately presented.' Given the failure of the adversarial process in this case, there is no other alternative except to grant a new trial.

Id., at 853.

Thus, the clear teaching of *Cooke* is that *Cronic* will control if the errors of counsel amounted to "structural defects" that infected the entire trial, irrespective of the "overwhelming" nature of the evidence against the defendant, or the overall performance of trial counsel. If the defendant chooses to have a trial and pursue a "not guilty" verdict, defense counsel is required to "assist" the defendant, within the bounds of the law, to attempt to achieve that result. The fact that defense counsel may sincerely and in good faith believe that the defendant is making a foolish, if not irrational, decision does not matter. See, *Cooke*, 977 A.2d at 864, n. 184 ("Here, counsel did not abandon Cooke's defense; they simply did not pursue Cooke's irrational and unreasonable strategy to pursue innocence").

In this case, the conduct of trial counsel, no matter how well-intentioned, created the very same "structural defects" found to exist in *Cooke*. In *Cooke*, this Court found "structural defect" where defense counsel told the jury that the defendant was "guilty, but mentally ill" even though the defendant had repeatedly told counsel that he wanted to pursue a defense that he did not commit the charged crimes. The Court also found "structural defect" where defense counsel "introduced Cooke's confession to Dr. Turner, argued to the jury that Cooke's testimony was

not credible, and told the sentencing judge and the jury that Cooke committed the crimes." *Id.*, at 849-850. In this case, after the defendant had testified that he did not sexually assault any of the eight women who testified at trial, defense counsel all but conceded, in the closing argument, that Sahin was guilty, but argued that his guilt was somehow mitigated by "cultural differences." (Trial, 6/1/09, pp. 64-65) (A29-A30). Like the strategy of defense counsel in *Cooke*, who argued that their client was "guilty, but mentally ill," the statement that Sahin's conduct could be explained by "cultural differences" amounted to a "structural defect" because it completely undermined Sahin's credibility as a witness⁸ in the trial and his goal of securing a "not guilty" verdict. Finally, although the above argument was raised in the Opening Brief, it bears repeating here, if only because the above argument is not even addressed by the State in its Brief.

⁸ Furthermore, as this Court has already noted in the direct appeal, "[defense counsel] advised the trial judge on several occasions that Sahin was not credible when he said he needed an interpreter, [even though] Sahin's entire defense...was related to his credibility as a witness." *Sahin v. State*, 7 A.3d 450, 453 (Del. 2010).

CONCLUSION

For the reasons and upon authorities set forth herein and in the Opening Brief, the Court should grant Appellant's Motion for Post Conviction Relief and remand the case to the Superior Court for a new trial.

Respectfully submitted,

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Dated: March 19, 2013