



IN THE SUPREME COURT OF THE STATE OF DELAWARE

TZE POONG LIU, )  
)  
Defendant-Below, )  
Appellant, )  
) No. 204, 2012  
v. )  
)  
STATE OF DELAWARE, )  
)  
Plaintiff-Below, )  
Appellee. )

APPELLANT'S REPLY BRIEF

/s/ James J. Haley, Jr.  
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Dated: September 24, 2012

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## ARGUMENT

In its answering brief, the State acknowledges that Liu was the victim of ineffective assistance of counsel, resulting in the loss of appellate review of Superior Court's denial of his previous motion for post-conviction relief, in exchange for defense counsel's promised, but never-filed, motion for new trial.

Superior Court found that said ineffective assistance was not prejudicial but failed to address the question of whether this Court views the loss of appellate review as inherently prejudicial. Liu submits that Superior Court review of prior errors occurring in Superior Court is not the equivalent of Supreme Court review of those errors.

The Supreme Court has discussed the significance of appellate review of convictions in the following terms:

"We are of the opinion that a remedy for [the defendant's] loss of the right to appeal must be found . . .

We, therefore, hold that the conviction may not stand and must be regarded as having been obtained in violation of the Constitution and laws unless this defendant is afforded a chance to appeal or an adequate alternate remedy. The chance to appeal was lost in spite of defendant's decision to appeal, and that loss occurred on account of the violation of defendant's right to effective representation."

Braxton v. State, 479 A2d 831, 834 (Del. 1984)

Similarly, because of the ineffective assistance of his counsel, Liu's opportunity for appellate review of Superior Court's denial of his motion for post-conviction was wasted. As in Braxton, "A remedy for the loss of the right to appeal must be found."

Restoring Liu's appellate rights regarding Superior Court's 1995 denial of his motion for post-conviction relief is the only fair remedy.

/s/ James J. Haley, Jr.

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CERTIFICATE OF SERVICE

I, James J. Haley, Jr., attorney for Appellant, do hereby certify that I caused the attached Reply Brief to be served by LexisNexis Efile and Serve on September 24, 2012 upon:

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