IN THE SUPREME COURT OF THE STATE OF DELAWARE

KASHAWN D. WESTON,	§	
	§	No. 96, 2006
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County.
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Def. ID No. 0301003687
Appellee.	§	

Submitted: October 27, 2006
Decided: January 11, 2007

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

O R D E R

This 11th day of January 2007, it appears to the Court that:

(1) The appellant, Kashawn D. Weston, has appealed the Superior Court's January 23, 2006 summary denial of his motion for postconviction relief. After considering the parties' briefs and the Superior Court record, we affirm the Superior Court's decision.

(2) In June 2003, a Superior Court jury convicted Weston of drug and weapon offenses. The Superior Court sentenced Weston to ten years at Level V followed by decreasing levels of supervision. On direct appeal, this Court affirmed.[1]

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[1] *Weston v. State*, 2004 WL 1551341 (Del. Supr.).

(3) Weston filed a motion for postconviction relief alleging ineffective assistance of counsel at trial and on direct appeal. The Superior Court summarily denied Weston's motion. This appeal followed.

(4) Weston claims that his defense counsel coerced him not to testify, failed to object to the prosecutor's closing argument, and refused to discuss his appeal.[2] Weston argues that the Superior Court erred when it ruled on his allegations of ineffective assistance of counsel without obtaining an affidavit from defense counsel.[3]

(5) The transcript of the closing argument does not support Weston's claim that the prosecutor "express[ed her] personal opinion on [the] merits of the case during closing arguments." Thus the Court concludes that the Superior Court did not err when summarily denying Weston's ineffective counsel claim based on prosecutorial misconduct.

(6) Weston claims that his defense counsel threatened to withdraw if he chose to testify in his own defense. According to Weston, his defense counsel's threats prevented him from taking the stand to tell the jury "his version of the

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[2]To the extent Weston has failed to brief his other postconviction claims, *e.g.*, that his defense counsel failed to file a motion to dismiss indictment, those claims are deemed abandoned and have not been addressed on appeal. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

[3]*See* Del. Super. Ct. Crim. R. 61(g)(2) (2006) (providing that the Superior Court may direct defense counsel to file an affidavit in response to allegations of ineffective assistance of counsel).

incident," namely that "he did not live in the [master] bedroom" where some of the contraband was found.[4]

(7) To prevail on his ineffective assistance of counsel claim, Weston must demonstrate that counsel's representation was objectively unreasonable and that, but for that unreasonable representation, there is a reasonable probability that the outcome of the proceeding would have been different.[5] Weston has not satisfied those requirements.

(8) The record does not support Weston's claim that his defense counsel threatened to withdraw and that, as a result, his decision not to testify was involuntary. The record reflects that when Weston was given an opportunity to address concerns about his defense counsel to the Superior Court, Weston alleged only that his counsel had failed to subpoena witnesses. Moreover, in the same discussion, when the Superior Court specifically asked Weston if he wished to take the stand to "tell [his] side of the story," Weston answered "[n]o."[6]

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[4]The record reflects that other witnesses testified that contraband was found in various locations including the master bedroom, and that Weston slept in the spare bedroom.

[5]*Brawley v. State*, 1992 WL 353838 (Del. Supr.) (citing *Robinson v. State*, 562 A.2d 1184, 1185 (Del. 1989) (quoting *Strickland v. Washington*, 466 U.S. 668 (1984))).

[6]Trial Tr. at C-39 (June 11, 2003).

(9) Under the circumstances of this case, Weston's allegations of ineffective assistance of counsel were sufficiently belied by the record. For that reason, the Court has determined that the Superior Court did not abuse its discretion when it decided Weston's postconviction motion in the absence of a responding affidavit from defense counsel.[7] Similarly an affidavit from defense counsel was not necessary to rule on the merit of Weston's arguments on appeal.[8]

(10) It is manifest that the appeal should be affirmed on the basis of the Superior Court's well-reasoned decision dated January 23, 2006. The Superior Court did not abuse its discretion when determining that Weston could not establish a meritorious claim of ineffective assistance of counsel.

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

BY THE COURT:

/s/ Carolyn Berger
Justice

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[7]*See* Del. Super. Ct. Crim. R. 61(d)(4) (2006) (providing that the Superior Court may summarily dismiss a postconviction motion if it "plainly appears" that the defendant is not entitled to relief).

[8]*Compare id. with Horne v. State*, 887 A.2d 973, 974-75 (Del. 2005) (determining on appeal from denial of postconviction motion that trial court record without counsel's responding affidavit was "incomplete and inadequate").