

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)
)
 v.) I.D. No. 1502005446
)
RAMON A. JOYNER,)
)
 Defendant.)

Submitted: April 27, 2018
Decided: July 17, 2018

Upon Defendant Ramon A. Joyner’s Amended Motion for Postconviction Relief

DENIED.

ORDER

Martin B. O’Connor, Esquire, Deputy Attorney General, Department of Justice, Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, Attorney for State of Delaware.

Natalie S. Woloshin, Esquire, 3200 Concord Pike, P.O. Box 7329, Wilmington, DE 19803, Attorney for Ramon A. Joyner.

WHARTON, J.

This 17th day of July, 2018, upon consideration of Defendant Ramon A. Joyner's Amended Motion for Postconviction Relief,¹ the State's Response,² the Defendant's Reply,³ the affidavits of trial counsel⁴ and appellate counsel,⁵ and the record in this matter, it appears to the Court that:

1. Defendant Ramon A. Joyner ("Joyner") was found guilty by a jury of unlawful sexual contact in the first degree (as a lesser included offense of rape in the second degree), kidnapping in the first degree, strangulation and malicious interference with communications equipment. The Court sentenced Joyner to 20 years of unsuspended incarceration, followed by decreasing levels of supervision. Joyner's convictions were affirmed on direct appeal to the Delaware Supreme Court on January 20, 2017.⁶

2. Joyner's original *pro se* Motion for Postconviction Relief ("Motion") pursuant to Superior Court Criminal Rule 61 was filed timely on January 30, 2017. That Motion raised an issue of ineffective assistance of counsel and an issue of abuse of discretion on the Court's part related to the ineffective assistance of counsel issue.

¹ D.I. 61.

² D.I. 88.

³ D.I. 90.

⁴ D.I. 85.

⁵ D.I. 86.

⁶ *Joyner v. State*, 2017 WL 444842 (Del., January 20, 2017).

3. On February 2, 2017, pursuant to Rule 61(g)(2), the Court directed trial counsel to respond to the allegations.” Trial counsel submitted his affidavit on May 1, 2017.⁷

4. Also on February 2, 2017, at Joyner’s request, the Court ordered the Office of Conflict Counsel to appoint counsel for him. On May 23, 2017, Natalie S. Woloshin, Esquire was appointed to represent Joyner.⁸

5. On December 6, 2017, Ms. Woloshin filed an Amended Motion for Post-Conviction Relief (“Amended Motion.”)⁹ The Amended Motion presents four grounds for relief, three of which involve allegations of ineffective assistance of trial counsel.¹⁰ The other allegation of ineffective assistance of counsel is directed at appellate counsel, who was not trial counsel. The allegations against trial counsel are different and more specific than the allegations Joyner brought in his *pro se* motion. Further, Joyner did not allege that his appellate counsel was ineffective. Because the new claims brought in the Amended Motion were not addressed by trial counsel when the Court originally directed that the record be expanded, the Court ordered trial counsel to submit a second affidavit and appellate counsel to submit one as well. Trial counsel submitted his affidavit on January 31, 2018,¹¹ and appellate counsel submitted

⁷ D.I. 72.

⁸ D.I. 76.

⁹ D.I. 83.

¹⁰ *Id.*

¹¹ D.I. 85.

his on February 12, 2018.¹² The State responded to the Amended Motion on March 29th 2018,¹³ and Joyner replied on April 27th.¹⁴

6. The Amended Motion raises three claims for relief related to the performance of Joyner's trial counsel and one related to his appellate counsel. First, he alleges that trial counsel was ineffective by failing to object to a forensic nurse examiner reading verbatim her notes of her interview with the complaining witness.¹⁵ He then alleges that trial counsel was ineffective by failing to object to what he characterizes as improper character evidence of Joyner's attempts to obtain and use marijuana on the occasion of the crime.¹⁶ Next he alleges that trial counsel was ineffective in failing to object to the prosecutor's improper leading questions of the complaining witness.¹⁷ He also alleges that trial counsel failed to impeach the complaining witness with a prior inconsistent statement.¹⁸ His final claim regarding trial counsel is that the cumulative effect of these errors requires granting his motion.¹⁹ He claims that appellate counsel was ineffective in failing to raise on appeal meritorious claims related to the examinations of the forensic nurse examiner and the complaining witness.²⁰

¹² D.I. 86.

¹³ D.I. 88.

¹⁴ D.I. 90.

¹⁵ *Id.* at 13-21.

¹⁶ *Id.* at 23-41.

¹⁷ *Id.* at 32-36.

¹⁸ *Id.* at 36-41.

¹⁹ *Id.* 42-43.

²⁰ *Id.* at 44.

7. Under Delaware Superior Court Rules of Criminal Procedure, a motion for post-conviction relief can be barred for time limitations, repetitive motions, procedural defaults, and former adjudications. A motion exceeds time limitations if it is filed more than one year after the conviction becomes final or if it asserts a newly recognized, retroactively applied right more than one year after it was first recognized.²¹ A motion is considered repetitive and therefore barred if it asserts any ground for relief “not asserted in a prior post-conviction proceeding.”²² Repetitive motions are only considered if it is “warranted in the interest of justice.”²³ Grounds for relief “not asserted in the proceedings leading to the judgment of conviction” are barred as procedurally defaulted unless the movant can show “cause for relief” and “prejudice from [the] violation.”²⁴ Grounds for relief formerly adjudicated in the case, including “proceedings leading to the judgment of conviction, in an appeal, in a post-conviction proceeding, or in a federal habeas corpus hearing” are barred.²⁵ Former adjudications are only reconsidered if “warranted in the interest of justice.”²⁶

8. Before addressing the merits of Defendant’s Amended Motion for Postconviction Relief, the Court must first apply the procedural bars of Superior Court

²¹ Super. Ct. Crim. R. 61(i)(1).

²² Super. Ct. Crim. R. 61(i)(2).

²³ *Id.*

²⁴ Super. Ct. Crim. R. 61(i)(3).

²⁵ Super. Ct. Crim. R. 61(i)(4).

²⁶ *Id.*

Criminal Rule 61(i).²⁷ If a procedural bar exists, then the Court will not consider the merits of the postconviction claim.²⁸

9. The State concedes that the Amended Motion is a timely first motion for postconviction relief alleging ineffective assistance of counsel, and is not otherwise procedurally defaulted.²⁹ Accordingly, the Court will consider it on its merits.³⁰

10. To successfully bring an ineffective assistance of counsel claim, a claimant must demonstrate: (1) that counsel's performance was deficient; and (2) that the deficiencies prejudiced the claimant by depriving him or her of a fair trial with reliable results.³¹ To prove counsel's deficiency, a defendant must show that counsel's representation fell below an objective standard of reasonableness.³² Moreover, a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.³³ "[A] court must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."³⁴ A successful Sixth Amendment claim of ineffective

²⁷ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

²⁸ *Id.*

²⁹ D.I. 88 at 8.

³⁰ The State has conceded the absence of a procedural bar. Therefore, the Court does not consider whether at least some of Joyner's claims may be subject to the bar of Rule 61(i)(4) as previously adjudicated in light of the Supreme Court's determination on direct appeal that there was no nonfrivolous issue for appeal. *See* Paragraphs 11-13, *infra*.

³¹ *Id.*

³² *Id.* at 667-668.

³³ *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

³⁴ *Strickland*, 446 U.S. at 689.

assistance of counsel requires a showing “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.”³⁵

11. The Court first addresses Joyner’s claim that his appellate counsel was ineffective, because resolution of that claim has implications for his claims against his trial counsel. Joyner alleges that his appellate counsel was ineffective because he “[failed] to raise the meritorious claims set forth in the previous sections of this brief.”³⁶ Presumably, Joyner means that appellate counsel should have raised these claims on their merits on direct appeal, since claims of ineffective assistance of counsel cannot be raised on direct appeal.³⁷ Put differently, and consistent with his arguments in the Amended Motion, it appears that all but one of Joyner’s claims of ineffective assistance of counsel are predicated on some legal error that appellate counsel could have, and should have, raised on direct appeal. First, he alleges that the forensic nurse examiner’s verbatim reading of her notes of her interview of the complaining witness violated DRE 403 and the injunction against cumulative evidence of *Richardson v. State*.³⁸ Next, he argues the admission of testimony from the complaining witness that Joyner was seeking to obtain marijuana on the night of the crime constituted improper bad conduct evidence in violation of DRE 404(b) and

³⁵ *Id.* at 694.

³⁶ D.I. 83 at 44.

³⁷ *Leacock v. State*, 690 A.2d 926, 928 (Del. 1996); *Duross v. State*, 494 A.2d 1265, 1267 (Del. 1985).

³⁸ D.I. 83 at 17, citing *Richardson v. State*, 43 A.3d 906, 909 (Del. 2012).

Getz v. State and *Deshields v. State*.³⁹ He also argues that the prosecutor improperly led the complaining witness on direct examination to the extent that “nearly all of [her] testimony was garnered through leading question [sic].”⁴⁰ Finally, he claims that the cumulative effect of these errors entitles him to a new trial.⁴¹ His only argument dealing exclusively with trial counsel’s ineffectiveness not based on some arguably appealable legal error is his claim that trial counsel failed to effectively impeach the complaining witness with a prior inconsistent statement.⁴²

12. On appeal, appellate counsel filed a no-merit brief and a motion to withdraw under Supreme Court Rule 26(c).⁴³ When the Supreme Court reviews a motion to withdraw and the 26(c) brief, it must be satisfied that appellant’s counsel made a conscientious examination of the record and law for arguable claims.⁴⁴ Further, the Supreme Court must conduct its own review of the record and determine whether “the appeal is indeed so frivolous that it may be decided without any adversary presentation.”⁴⁵ In performing this task, and “having conducted ‘a full examination of all the proceedings’ and found ‘no nonfrivolous issue for appeal,’” the Supreme Court was satisfied that “Joyner’s appellate counsel made a conscientious

³⁹ *Id.* at 24, citing *Getz v. State*, 538 A.2d 726, 730 (Del. 1988); *Deshields v. State*, 706 A.2d 502 (Del. 1998).

⁴⁰ *Id.* at 35.

⁴¹ *Id.* at 42.

⁴² *Id.* at 36.

⁴³ *Joyner v. State* at *2.

⁴⁴ *Id.*

⁴⁵ *Id.* quoting *Penon v. Ohio*, 488 U.S. 75, 82 (1988).

effort to examine the record and the law and properly determined that Joyner could not raise a meritorious claim on appeal.”⁴⁶ Thus, the Supreme Court, having reviewed the record, did not see any arguable substantive merit to raising on appeal Joyner’s claims about the forensic nurse examiner’s testimony, the testimony about Joyner attempts to obtain marijuana, or the prosecutor’s leading questions. Obviously, there being no merit to any of these claims, there can be no merit to any cumulative effect of these claims. Further, Joyner does not explain how appellate counsel was ineffective in light of the Supreme Court’s Rule 26 review. Therefore, this Court finds no performance deficiency on appellate counsel’s part, nor prejudice to Joyner by virtue of counsel’s decision not to argue these claims on appeal.

13. The foregoing has implications for Joyner’s ineffectiveness claims against trial counsel as well. To the extent there is no merit to the underlying evidentiary or method of examination claims, it is difficult to see how trial counsel’s failure to raise them by way of objection constituted performance deficiency or resulted in prejudice to Joyner. Nonetheless, because the parties have not addressed the claims of trial counsel’s ineffectiveness in this context, the Court will review them as argued. All of Joyner’s claims fail to meet both *Strickland’s* performance deficiency and prejudice prongs.

14. At trial, Joyner’s counsel objected to the jury having available to it during its deliberations that portion of the medical records constituting the forensic nurse

⁴⁶ *Id.* quoting *Penson* at 80.

examiner's notes of her interview of the complaining witness. He did not object to her reading her notes. Ultimately, the Court agreed that the written notes would not be permitted to go to the jury, at least in part because the Court felt that the jury might give more weight to the written statement, which included a claim that the complaining witness had been digitally penetrated, than her trial testimony which did not.⁴⁷ Joyner now claims that trial counsel was ineffective in failing to object to the forensic nurse reading from her notes of the interview. He bases this claim on an allegation that the testimony was cumulative and unduly prejudicial under DRE 403 and *Richardson*. He is mistaken. The notes were admitted as a statement made for the purpose of medical diagnosis or treatment under DRE 803(4).⁴⁸ Thus, the notes served a different purpose than the direct testimony of the complaining witness. Applying DRE 403, the Court finds that the probative value of the notes on the issue of medical diagnosis or treatment was not substantially outweighed by the danger of unfair prejudice or the needless presentation of cumulative evidence. Further, any risk that the jury might give the notes greater weight than the complaining witness' trial testimony was mitigated by the Court's decision not allow the written notes to be admitted as an exhibit.⁴⁹ Because the testimony was properly admitted, trial counsel

⁴⁷ D.I. 84 at A96-97.

⁴⁸ *Id.* at A50.

⁴⁹ Joyner also misreads *Richardson* as unequivocally proscribing the admissibility of statements in the context of 11 *Del. C.* § 3507 where the witness has full recall of the events and is not contradicting the prior out-of-court statement. The Supreme Court expressly declined to decide the case on that basis. *Richardson*, 43 A.3d at 909.

was not ineffective in failing to object. For that same reason, Joyner was not prejudiced by counsel's failure to object.

15. The Court turns to Joyner's claim that counsel was ineffective in failing to object to what he describes as improper character evidence. Specifically, invoking *Getz* and *Deshields*, Joyner claims that he was prejudiced by the complaining witness' multiple references to Joyner attempting to obtain and use marijuana on the occasion of the crime.⁵⁰ Apparently, the logic of Joyner's argument is that the jury would conclude that, since he was willing to break the law by using marijuana, he had no respect for the law and was willing to break the law by committing rape, kidnapping and strangulation.⁵¹ To state the proposition is to refute it. Obviously, it is not true that someone willing to break the relatively minor legal sanction against merely possessing and using marijuana would be of such bad character that that person would also be willing to commit the exponentially more serious crimes of rape, kidnapping, and strangulation. No reasonable juror would agree with Joyner's logic. Accordingly, Joyner suffered no prejudice by virtue of trial counsel's failure to continue to object to the testimony. Further, trial counsel's decision to forego objecting was reasonable and within the broad range of strategic decision-making afforded to trial lawyers. Trial counsel explained that he considered the issue carefully and determined the complaining witness' knowledge that Joyner was attempting to obtain marijuana

⁵⁰ D.I. 83 at 23-32.

⁵¹ *Id.* at 31.

would demonstrate her own willingness to engage in illegal conduct as well as undermine her stated reasons for going to the casino originally and then leaving with Joyner.⁵² In light of the *de minimus* adverse implications of marijuana use and corresponding implications of the complaining witness' tolerance of such use, the Court finds that Joyner has failed to meet either *Strickland's* performance or prejudice prongs.

16. Next, Joyner claims that trial counsel was ineffective for failing to object to improper leading questions asked by the prosecutor of the complaining witness on direct examination. Joyner lists some forty questions he alleges were improper leading questions.⁵³ As an initial proposition, it appears to the Court that the vast majority of questions Joyner labels as objectionable because they were leading were either not leading or were simply background questions asked to facilitate the development of the witness' testimony. Further, there is no reason to dispute trial counsel's belief that had an objection been sustained the prosecutor simply would have rephrased the question to elicit the desired testimony.⁵⁴ What Joyner does not do, however, is identify a particular question that led to a particular answer that was prejudicial to him. Accordingly, the Court finds that Joyner has failed to establish that trial counsel was ineffective under either of *Strickland's* two prongs.

⁵² D.I. 85.

⁵³ D.I. 83 at 32-35.

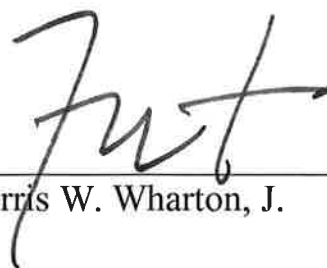
⁵⁴ D.I. 85.

17. Joyner claims that trial counsel failed to impeach the complaining witness with a prior inconsistent statement concerning whether or not she knew that she and Joyner were going to a hotel.⁵⁵ Trial counsel did confront the complaining witness with the inconsistency. She claimed she “did not remember” telling the police that she and Joyner were going to a hotel.⁵⁶ Trial counsel later asked the police officer, who confirmed that the complaining witness told him she and Joyner were going to as hotel.⁵⁷ Trial counsel used this testimony to attack the complaining witness’ credibility in his summation.⁵⁸ This argument fails for want of factual support in the record.

18. Joyner’s final argument is that the cumulative effect of trial counsel’s errors calls into question confidence in the jury’s verdict and the fairness of his trial. Because the Court found no errors on counsel’s part, this argument fails.

THEREFORE, Defendant Ramon A. Joyner’s Amended Motion for Post-conviction Relief is **DENIED**.

IT IS SO ORDERED.



Ferris W. Wharton, J.

⁵⁵ D.I. 83 at 36.

⁵⁶ D.I. 84 at A87.

⁵⁷ *Id.* at A99.

⁵⁸ *Id.* at A133.