

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	)	
	)	Def. I.D. # ID Nos. 2104013901
	)	2104013945
	)	2104013877
v.	)	
	)	
RANDON WILKERSON,	)	
	)	
Defendant.	)	

Submitted: July 6, 2026
Decided: August 18, 2026

Postconviction Counsel's Motion to Withdraw

GRANTED

Defendant's Motion for Postconviction Relief (R-1)

DENIED

MEMORANDUM OPINION AND ORDER

Abby Adams, Esquire, Deputy Attorney General, Department of Justice, 820 North French Street, Wilmington, DE 19801; Attorney for State of Delaware.

Megan J. Davies, Esquire, 300 Delaware Avenue, Suite 2280, Wilmington, DE 19801; Postconviction Counsel for Defendant.

KARSNITZ, R. J.

BACKGROUND AND PROCEDURAL HISTORY

Arrest

On April 25, 2021, police responded to 11773 Buckingham Drive, Delmar, Delaware where they found Corporal Keith Heacock severely injured, and learned that neighbors Judith and Steven Franklin had additionally been assaulted. Randon Wilkerson (“Defendant”) was arrested in connection with the attempted murder of Corporal Heacock and the assaults on the Franklins. Despite heroic efforts by his fellow police officers, Corporal Heacock ultimately died of his injuries.

Indictment

On June 14, 2021 a Sussex County Grand Jury indicted Defendant for: Murder First Degree - intentional murder (Count One); Possession of a Deadly Weapon During Commission of a Felony (Count Two); Murder First Degree - recklessly killing an officer in the line of duty (Count Three); Possession of a Deadly Weapon during the Commission of a Felony (“PDWDCF”) (Count Four); Possession of a Deadly Weapon by a Person Prohibited (“PDWBPP”) (Count Five); Assault First Degree - Steven Franklin (Count Six); PDWDCF (Count Seven); Assault First Degree-Judith Franklin (Count Eight); PDWDCF (Count Nine); PDWBPP (Count Ten); Burglary First Degree - Franklin residence (Count Eleven); PDWDCF (Count Twelve); PDWBPP (Count Thirteen); Assault Third

Degree - Charles Meagher (Count Fourteen); and Terroristic Threatening - Steven Franklin (Count Fifteen). Defendant was separately charged by information with Offensive Touching of a phlebotomist who was attempting to draw his blood at the time of his arrest. (PA19).

State's Motion *in Limine* to Bar the Defense

The evidence against Defendant was strong, including eye-witness statements and identifications, DNA evidence, and Defendant's own admissions. Given the overwhelming weight of the evidence, trial counsel for Defendant ("Trial Counsel") had one avenue of defense: involuntary intoxication. There was no question that Defendant was under the influence of drugs at the time of the incident. Trial Counsel asserted that, while Defendant had voluntarily sought to ingest drugs, the drugs that his girlfriend injected into him were different than those he had requested. Defendant, a long-term drug user, had planned to take methamphetamine, a drug with which he was experienced and whose effects on him he understood. Trial Counsel asserted that the evidence showed that, instead of methamphetamine, Defendant had been injected with bath salts, causing his egregious behavior. Trial Counsel relied upon Defendant's girlfriend and two expert witnesses in an attempt to factually buttress this claim. When I reviewed the contention, I opined that the factual evidence was unconvincing and speculative. I

also found the legal underpinning flawed, and our Supreme Court upheld that determination.

The State moved *in limine* to bar this defense, arguing that Defendant was not entitled to the involuntary intoxication defense due to his voluntary consumption of illegal drugs. The State additionally argued that the two defense experts should be excluded, claiming they did not meet the standard outlined in *Daubert*.

I granted the State's Motion *in Limine* and barred the involuntary intoxication defense and the two expert witnesses. Trial Counsel preserved this issue for appeal.

Bench Trial

As a result of my rulings, Trial Counsel proposed a stipulated bench trial. I held a colloquy hearing with Defendant on September 25, 2023. He affirmatively waived his right to a jury trial and agreed to proceed to a stipulated fact bench trial. He also signed a Stipulation of Waiver of Jury Trial, which was signed by counsel for both sides. I held the trial on October 16, 2023. I read the Trial Stipulation of Facts into the record and admitted it as evidence. I then rendered a verdict, finding Defendant guilty of all counts.

Sentencing

I held a sentencing hearing on December 8, 2023 and sentenced Defendant to two life sentences plus 238 years.

Direct Appeal

Trial Counsel continued to represent Defendant on appeal, where Defendant raised one issue: that I erred in granting the State's Motion *in Limine*, depriving him of his due process right to present a defense. On January 7, 2025, the Delaware Supreme Court affirmed Defendant's conviction.¹ The Court held that a person who knowingly introduces an unlawful intoxicating substance into his body is precluded from presenting an involuntary intoxication defense even when the unlawful substance differs from the one the person thought he was introducing or when the effects of the unlawful substance differ from those that the person anticipated.

Rule 61 Postconviction Proceedings

Defendant filed a timely *pro se* motion for postconviction relief under Superior Court Criminal Rule 61, together with a motion for appointment of postconviction counsel,² on April 14, 2025. On February 25, 2026, Postconviction Counsel was assigned by the Office of Conflicts Counsel to represent Defendant.

On April 6, 2026, I entered a Scheduling Order requiring Postconviction Counsel to file an amended motion for postconviction relief or a motion to withdraw

¹ *Wilkerson v. State*, 338 A.3d 477 (Del. 2025).

² Super. Ct. Crim. R. 61(e)(2).

by July 6, 2026. The State was required to file a response by October 5, 2026, and Defendant was required to file a Reply by November 4, 2026.

Rather than filing an amended motion for postconviction relief, on July 6, 2026, Postconviction Counsel filed a Motion to Withdraw.³ Defendant's Response to Postconviction Counsel's Motion to Withdraw was due by August 6, 2026 (30 days).⁴ Defendant has filed no Response. Since I am granting Postconviction Counsel's Motion to Withdraw, there will be no Amended Motion for Postconviction Relief. Thus, I will rely on Defendant's *pro se* April 14, 2025 Motion.

After careful review of the Motion for Postconviction Relief and the Motion to Withdraw, I have decided that expansion of the record to include an affidavit from Trial Counsel (the "Trial Counsel Affidavit")⁵ or an evidentiary hearing⁶ is not required.

This is my decision on Postconviction Counsel's Motion to Withdraw and on Defendant's Motion for Postconviction Relief.

³ Super. Ct. Crim. R. 61(e)(7).

⁴ *Id.*

⁵ Super. Ct. Crim. R. 61(g)(2).

⁶ Super. Ct. Crim. R. 61(h).

WITDRAWAL OF POSTCONVICTION COUNSEL

On July 6, 2026, I received a Motion to Withdraw from Postconviction Counsel stating that, having found Defendant's claims to be so lacking in merit that she could not advocate them.⁷ Postconviction Counsel submitted a Memorandum of Law with the Motion, together Exhibits, which laid out the facts and procedural posture of the case in considerable detail. The Memorandum then laid out in great detail the reasons why Postconviction Counsel could not ethically advocate Petitioner's claims. I need not repeat that analysis here; it is essentially the same analysis I give later in this opinion for denying the Motion for Postconviction Relief.

The applicable legal standard is that I must be satisfied that Postconviction Counsel made a conscientious examination of the record and the law for potentially meritorious claims, and that I have an independent duty to review the record and determine whether the Motion for Postconviction Relief is devoid of any arguable claims.⁸ I have done so. I conclude that Postconviction Counsel has conducted herself professionally, ethically, and honorably and that she correctly found no meritorious claims.

I remind Postconviction Counsel of her continuing duties under Superior Court Criminal Rule 61(e)(7)(ii). Specifically, Postconviction Counsel must (A)

⁷ Super. Ct. Crim. R. 61(e)(7)(i).

⁸ *State v. Harris*, 2020 WL 4284407 (Del. Super. July 24, 2020).

notify Defendant in writing of this decision, and (B) advise Defendant of his right to appeal *pro se*, the rules for filing a timely notice of appeal, and that it is Defendant's burden to file a notice of appeal if desired.

Postconviction Counsel's Motion to Withdraw is **GRANTED**.

MOTION FOR POSTCONVICTION RELIEF

The Five Grounds for Postconviction Relief

In his Motion, Defendant asserts five grounds for postconviction relief, all invoking ineffective assistance of counsel:

1. Trial Counsel made his own narrative, editing Defendant's intended statement to me and refusing to present evidence that Defendant wanted to be presented.
2. Trial Counsel suppressed favorable evidence against Defendant due to the destruction of his blood sample prior to retesting.
3. Trial Counsel suppressed favorable evidence in failing to present audio and video from the arrest which would have demonstrated Defendant's mental state.
4. Defendant's psychological examination was faulty.
5. Trial Counsel coerced Defendant into having a bench trial.

Procedural Bars

I first address the four procedural bars of Rule 61.⁹ If a procedural bar exists, as a general rule I will not address the merits of the postconviction claim.¹⁰ A Rule 61 Motion can be barred for time limitations, successive motions, failure to raise claims below, or former adjudication.¹¹

First, a motion for postconviction relief exceeds time limitations if it is filed more than one year after the conviction becomes final.¹² In this case, Defendant's conviction became final for purposes of Rule 61 when the Delaware Supreme Court issued a mandate or order finally determining the case on direct review, i.e., January 7, 2025.¹³ Defendant filed his *pro se* Motion on April 14, 2025, well within the one-year period. Therefore, consideration of the Petition is not barred by the one-year limitation.

Second, second or subsequent motions for postconviction relief are not permitted unless certain conditions are satisfied.¹⁴ Since this is Defendant's first motion for postconviction relief, consideration of the Motion is not barred by this provision.

⁹ *Ayers v. State*, 802 A.2d 278, 281 (Del.2002) (citing *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹⁰ *Bradley v. State*, 135 A.3d 748 (Del 2016); *State v. Page*, 2009 WL 1141738, at*13 (Del. Super. April 28, 2009).

¹¹ Super. Ct. Crim. R. 61(i).

¹² Super. Ct. Crim. R. 61(i)(1).

¹³ Super. Ct. Crim. R. 61(m)(2).

¹⁴ Super. Ct. Crim. R. 61(i)(2).

Third, grounds for relief which could have been but were not “not asserted in the proceedings leading to the judgment of conviction”¹⁵ or on direct appeal are procedurally barred. It is well-settled Delaware law that, as collateral claims, ineffective assistance of counsel claims are properly raised for the first time in postconviction proceedings.¹⁶ Thus, consideration of the Motion is not barred by this provision.

Fourth, 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.¹⁷ Consideration of the Motion is not barred by this provision.

Finally, none of these procedural bars apply to a claim that pleads with particularity (1) that new evidence exists that creates a strong inference that Petitioner is actually innocent in fact, or (2) a new, retroactive rule of constitutional law applies to Petitioner’s case.¹⁸ Neither of these exceptions apply here. I will therefore consider the Motion on its merits.

¹⁵ Super. Ct. Crim. R. 61(i)(3).

¹⁶ *State v. Schofield*, 2019 WL 103862, at *2 (Del. Super. January 3, 2019); *Thelemarque v. State*, 2016 WL 556631, at *3 (Del. Feb. 11, 2016) (“[T]his Court will not review claims of ineffective assistance of counsel for the first time on direct appeal.”); *Watson v. State*, 2013 WL 5745708, at *2 (Del. Oct. 21, 2013) (“It is well-settled that this Court will not consider a claim of ineffective assistance that is raised for the first time in a direct appeal.”).

¹⁷ Super. Ct. Crim. R. 61(i)(4).

¹⁸ Super. Ct. Crim. R. 61(i)(5); Super. Ct. Crim. R. 61(d)(2)(i) and (ii).

Legal Standard

All five of Defendant's claims are based on ineffective assistance of counsel. Such claims are assessed under the two-part standard established in *Strickland v. Washington*,¹⁹ as applied in Delaware.²⁰ Under *Strickland*, Defendant must show that (1) Trial Counsel's representation "fell below an objective standard of reasonableness" (the "performance prong"); and (2) the "deficient performance prejudiced [his] defense." (the "prejudice prong").²¹ In considering the performance prong, the United States Supreme Court was mindful that "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable."²² *Strickland* requires an objective analysis, making every effort "to eliminate the distorting effects of hindsight" and to "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."²³ "[S]trategic choices about which lines of defense to pursue are owed deference commensurate with the reasonableness of the professional judgments on which they are based."²⁴

¹⁹ 466 U.S. 668 (1984).

²⁰ *Albury v. State*, 551 A.2d 53 (Del. 1988).

²¹ *Strickland* at 687.

²² *Id.* at 690.

²³ *Id.* at 689.

²⁴ *Id.* at 681.

As to the performance prong, Defendant must demonstrate that Trial Counsel's strategic decisions, as discussed more fully below, were unreasonable.

As to the prejudice prong, Defendant must demonstrate that there exists a reasonable probability that, but for Trial Counsel's errors, the outcome of the trial would have been different.²⁵ Even if the performance of Trial was professionally unreasonable, it would not warrant setting aside the judgment of conviction if the error had no effect on the judgment.²⁶ A showing of prejudice "requires more than a showing of theoretical possibility that the outcome was affected."²⁷

Strickland teaches that there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in a particular order, or even to address both prongs of the inquiry if the defendant makes an insufficient showing on one. In particular, a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant because of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed.²⁸ In every case, the court should be concerned with whether, despite the strong presumption of reliability, the

²⁵ *Albury*, at 687; *Zebroski v. State*, 822 A.2d 1038, 1043 (Del. 2003); *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996).

²⁶ *Strickland*, at 691.

²⁷ *Frey v. Fulcomer*, 974 F.2d 348, 358 (3d Cir. 1992).

²⁸ *Strickland*, at 697.

result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results.²⁹

Analysis

Claim 1 -- Failure to Present Evidence and Testimony

Defendant claims that Trial Counsel heavily edited the statement he made to me and refused to present other evidence and defenses that he requested.

With respect to Defendant's statement to me, while Defendant had the right to testify in his defense at trial, he is still bound by the rules of evidence, including relevancy. Defendant wanted to explain to me that he was having a psychotic break caused by the drugs Amanda Rooks ("Rooks") had given him, and that in his distorted mind he thought he was doing a good thing. Given the Supreme Court's ruling, none of this information would have been relevant or admissible at trial. Trial Counsel addressed this at the time of Defendant's jury trial waiver colloquy: "[Defendant] is also aware that this Court has granted the State's motion to exclude our defense at trial. This decision also means that, should [Defendant] choose to testify at his trial, many of the things he would like to talk about would be objected to by the State. Given this Court's pretrial ruling, those objections would be sustained, thereby frustrating [Defendant's] desire to tell his side of the story." In my view, Trial

²⁹ *Id.* at 696.

Counsel advising Defendant of the evidentiary limitations of his desired testimony, in advance of trial, was not ineffective representation, but rather proper trial preparation.

With respect to presenting other evidence and defenses, Defendant make an argument that Rooks had intentionally injected him with drugs other than methamphetamine. In support of this, he wanted to argue that Rooks was having a sexual relationship with her drug dealer, who may have wanted to get Defendant out of the way. Defendant further wanted to argue that Rooks had criminal charges against her for concealment of a corpse connected to a drug overdose.

Where "an attorney makes a strategic choice after thorough investigation of law and facts relevant to plausible options, the presumption that an attorney acted reasonably is virtually unchallengeable."³⁰ Rooks' statement to defense investigators was the only evidence the defense had that Defendant had unknowingly ingested bath salts instead of methamphetamine. Trial Counsel was attempting to preserve the right to argue an involuntary intoxication defense. Had Trial Counsel been successful on appeal, he would have needed the testimony of Rooks at trial. Accusing Rooks or her drug dealer of intentionally attempting to

³⁰ *Purnell v. State*, 106 A.3d 337, 342 (Del. 2014); *Hoskins v. State*, 102 A.3d 724, 733 (Del. 2014).

harm Defendant would have made her a hostile witness which could have damaged the defense. Moreover, given that I had already barred the defense from using the involuntary intoxication defense, Rooks' testimony of Ms. Rooks would not have been admissible. In my view, Trial Counsel's failure to further Defendant's desired argument does not amount to ineffective assistance of counsel.

I deny this claim.

Claim 2 -- The Destroyed Blood Sample

Trial Counsel sent Defendant's blood sample for further testing, under the theory that the State's earlier testing was insufficient to rule out the presence of bath salts in Defendant's system. During transit from the State lab to the defense lab, the vial was broken and the sample was destroyed.

Defendant asserts that the destruction of his blood sample was the result of intentional tampering by the lab in order to destroy favorable evidence against him. He faults Trial Counsel for failing to challenge the chain of custody for the blood sample. Defendant takes the position that police departments and forensic labs have extensive practice in handling the storing, shipping, and packaging of forensic materials. He was unable to locate any other case where a defendant's blood sample was destroyed due to a vial breaking in transit. He asserts that it is unlikely if not impossible to believe that his blood sample could

have been destroyed prior to retesting other than a sinister act by the laboratory selected for retesting. Therefore, Defendant claims, if Trial Counsel had filed a motion challenging the chain of custody, such a motion would have demonstrated the unlawful and purposeful destruction of defense evidence.

There is no legal basis to support Defendant's claim. Postconviction Counsel found no support for this theory. Trial Counsel documented the conversations between the State and private lab. The State lab technician indicated that she followed all of the recommendations from the private lab for packaging and shipping the sample, including wrapping the tube in bubble wrap sent by the private lab and shipping it on dry ice. The technician wrote that she took the extra step of calling the private lab to alleviate any concern about the bubble wrap impacting the temperature of the frozen sample. The correspondence indicates that the dry ice needed for shipping arrived at the State lab between 9:00 a.m. and 10:30 a.m. on September 15, 2022. The package weighed 14 pounds was scheduled for delivery to the private lab before 10:30 a.m. the following day. On September 15, 2022, Trial Counsel emailed the private lab to inform it that the sample should arrive on September 16, 2022. The private lab confirmed that it would be prepared to receive the sample. On September 22, 2022, Trial Counsel sent an email to the private lab asking

it to confirm that it had received the sample. The private lab responded that the sample was received but the tube broke in transit leaving no volume sufficient to run any tests. The private lab asked if there was additional blood available to submit, but Trial Counsel determined that there was not.

Thus, there is no evidence of intentional tampering by any State actor. The State did not deviate from ordinary evidence-handling or laboratory protocols and there was a clear indication of who handled the sample last and what she did with the sample in order to forward it to the private lab. The private lab did not indicate any failure by the State to follow the packing and delivery instructions. Even if one argues fault on the part of the private lab, there is no motive for the private lab hired by the defense to destroy the sample it was being paid to test.

In any event, the ruling of the Delaware Supreme Court moots this issue. Even if the sample had been preserved and tested, and even if that sample showed bath salts in his system, there would be nothing exculpatory about those test results. The Supreme Court ruled that, so long as Defendant voluntarily ingested an intoxicating substance, he could not raise an intoxication defense even if that substance was entirely different than the intoxicating substance he had intended to inject into his system.

Finally, to the extent that Defendant's claim could be construed as a claim that

the State failed in its duty to gather and preserve evidence, it fares no better. The State has a duty to preserve evidence material to a defendant's guilt or innocence.³¹ Where that duty is breached, the Court weighs (1) the degree of negligence or bad faith involved; (2) the importance of the missing evidence considering the probative value and reliability of secondary or substitute evidence that remains available; and (3) the sufficiency of the other evidence used at trial to sustain the conviction.³² Here, the sample was not lost while in the State's custody; it was destroyed in transit to the private lab retained by the defense, after the State's technician followed the private lab's packaging and shipping instructions. There is no evidence of negligence, let alone bad faith, by any State actor. Nor was the missing evidence material. Considering the Supreme Court's holding on direct appeal, a test result confirming the presence of bath salts would not have supported any cognizable defense. The remaining evidence of guilt (eyewitness identifications, DNA evidence, and Defendant's own recorded admissions) was overwhelming. Accordingly, no meritorious claim arises from the destruction of the blood sample, and Trial Counsel was not ineffective for declining to pursue it.

³¹ *Deberry v. State*, 457 A.2d 744 (Del. 1983).

³² *Hammond v. State*, 569 A.2d 81, 87 (Del. 1989); *see also Lolly v. State*, 611 A.2d 956 (Del. 1992).

I deny this claim.

Claim 3 -- Suppression of Favorable Evidence: Full Audio Recordings

Defendant's post-arrest behavior and statements were captured on multiple recording devices, including the video inside the police car where he was held while being transported and on the device used to record his statements at the police station. Although the recordings captured hours of his statements and demeanor post-arrest, only minimal excerpts from these statements were introduced at trial. Specifically, the stipulation noted only the following statements: "I killed him." "I killed that bitch." "I smashed him over the head with the weight." "Then I went across the street and I told them and they said I was the one who did it." "I killed that police officer that walked in that house." "I beat that man."

During the multiple hours of recording, Defendant also made numerous erratic and nonsensical statements. He seemed unsure if his hand was still attached to his body and counted the fingers on his hand, hand cuffed behind his back, to be sure. He talked to his grandmother, who is deceased. He mentions a cartel and cannibalism. He consistently grunts or screams, with random periods of singing. He says that he believed he had killed a child abuser and makes statements like "I will be a legend for killing a child molester." "Help. I did nothing wrong. I only killed that man because he touched on those children. Sick." "I have been kidnapped. Well not kidnapped but I killed a child molester." "I saved those kids.

That wasn't a police officer. They were getting raped." "There were kids getting molested in that house." "I'm not going to have no big guy running around raping nobody." "Chuck was telling me the dude was raping people in the house." "Chuck told me that if there were any issues to run across the street to the neighbor's house. "I hit him," meaning the neighbor, "in the head with the angels, but I realized he wasn't the enemy." "Why would a police officer rape a child?"

Defendant argues Trial Counsel was ineffective in not playing the entirety of the recordings for me, which would have evidenced his mental state, that he was fully "out of his mind," and that he believed he was saving others from a child predator. But given my ruling, later affirmed by the Supreme Court, those statements were neither relevant nor admissible to support a defense.

Trial Counsel did use these statements in support of his sentencing argument. Trial Counsel at sentencing cited to these portions of the evidence arguing that Defendant had a long history of mental illness and drug addiction and in his altered state did not intend to cause the death of Cpl. Heacock. This was not ineffective assistance of counsel.

I deny this claim.

Claim 4 -- Reliance on Faulty Psychological Evaluation

Defendant argues that Trial Counsel relied on a psychological evaluation

which was not fully credible because the psychologist found that Defendant was embellishing and did not consider the statements Defendant made at the time of his arrest or at the police station. To the contrary, however, Trial Counsel provided the psychologist with copies of the statements Defendant made at the time of his arrest and at the police station. Moreover, Trial Counsel obtained the underlying records of Defendant's mental health history and created a detailed timeline of prior mental health issues. The psychologist had all relevant information for purposes of conducting the examination of Defendant.

To the extent Defendant argues that Trial Counsel should have presented a Not Guilty by Reason of Insanity ("NGRI") defense, such a defense is available only where, at the time of the conduct charged and "as a result of mental illness or serious mental disorder," the defendant "lacked substantial capacity to appreciate the wrongfulness of [his] conduct."³³ The burden of proof is on Defendant to prove an NGRI claim.³⁴ The psychologist, after conducting a complete examination, found no evidence that Defendant, at the time of the offense, had been suffering from a mental health issue which impaired his ability to appreciate the wrongfulness of his conduct.

Even if there were flaws in the records Trial Counsel provided to the

³³ See 11 *Del. C.* § 401(a).

³⁴ *Sanders v. State*, 585 A.2d 117, 131 (Del. 1990).

psychologist, there would not have been a different outcome. The NGRI defense is not available to an individual whose alleged insanity or mental illness was proximately caused by the voluntary ingestion, inhalation or injection of intoxicating liquor, any drug or other mentally debilitating substance, or any combination thereof, unless such substance was prescribed for the defendant by a licensed health-care practitioner and was used in accordance with the directions of such prescription.³⁵ All evidence in the case, including Defendant's own written narrative provided to Trial Counsel, confirm that his actions were connected to his use of drugs. All witness testimony indicated that Defendant had taken a significant number of drugs and drugs were found in his system based on a blood sample at the time of his arrest.

This was not ineffective assistance of counsel. I deny this claim.

Claim 5 -- The Bench Trial was a Result of Coercion.

In the context of a waiver of the right to trial by jury, "the defendant bears the burden of proving that his counsel was unreasonable and whether counsel's deficiency prejudiced defendant's waiver of a trial by jury."³⁶ If Trial Counsel is deficient in explaining to a defendant his right to a jury trial and the consequences

³⁵ 11 Del. C. § 401.

³⁶ *State v. Tave*, 2014 WL 785033, at *3 (Del. Super. Feb. 26, 2014).

of waiving that right, Trial Counsel's deficiency can be cured by the Court through a colloquy.³⁷ In order for a defendant to waive his right to a jury trial, the waiver must be an intelligent and voluntary waiver in writing.³⁸ The waiver of the right to a jury trial is considered intelligent and voluntary when the defendant is aware of the nature of the right and the implications of choosing to waive that right, which may be established when the Court engages the defendant in a colloquy.³⁹

On September 25, 2023, I held a colloquy regarding Defendant's waiver of a jury trial. Trial Counsel placed on the record that he and his co-counsel had had numerous meetings with Defendant and discussed the strength of the State's evidence. That evidence included Defendant's DNA on both murder weapons involving Cpl. Heacock and on many other pieces of evidence in his house. His DNA was on the interior door of the Franklins' residence, and both Franklins identified Defendant as their assailant. There was at least one eyewitness to the assault of Cpl. Heacock who identified Defendant as the assailant. Multiple witnesses would also be able to testify to Defendant's behavior, and his own recorded statements were to the effect that he committed the homicide. Trial Counsel

³⁷ *State v. Couch*, 2007 WL 987403, at *4 (Del. Super. Mar. 30, 2007).

³⁸ *Davis v. State*, 809 A.2d 565, 569 (Del. 2002).

³⁹ *Id.* at 569-72.

advised that he had considered and discussed with Defendant any possible defenses including any possibility of a lesser-included offense. Trial Counsel placed on the record that, knowing the evidence against Defendant and understanding my ruling precluding an involuntary intoxication defense, Defendant had elected to waive his right to trial by jury and proceed by a stipulated fact trial. The record makes it clear that the stipulation agreed that all of the elements of the charges existed and that the effect of the stipulation and bench trial would be a finding of guilt against Defendant.

I then conducted a colloquy wherein Defendant acknowledged his understanding of his right to a trial by jury and his desire to waive that right. A form stipulation of waiver of jury trial was admitted for the record bearing Defendant's signature.

The representations made by Trial Counsel on the record, my colloquy, and the signed waiver of jury trial all establish an intelligent and voluntary waiver of jury trial by Defendant.

This was not ineffective assistance of counsel. I deny this claim.

CONCLUSION

"Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining

counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable."⁴⁰ Despite our Supreme Court's prohibition on analyzing Trial Counsel's performance through the "distorting effects of hindsight,"⁴¹ the arguments set forth in the Motion do just that. Defendant's claims are based on conclusory assumptions that, had Trial Counsel acted differently, he would have somehow been able to overcome the substantial evidence that was stipulated to at trial.

In light of the highly deferential approach I should take when reviewing such claims, and the strong presumption that Trial Counsel's conduct was professionally reasonable, Defendant has not shown that Trial Counsel's representation fell below an objective standard of reasonableness or that there is a reasonable probability that, but for their errors, the result of the case would have been different.

"The defendant is entitled to a fair trial, not a perfect trial."⁴² In my view, Defendant received a fair trial, and his dissatisfaction with the outcome neither changes that fact nor demonstrates that Trial Counsel provided ineffective assistance of counsel under the standards set forth in *Strickland*.

⁴⁰ *Wright*, 671 A.2d at 1356-57 (quoting *Strickland v. Washington*, 466 U.S. at 689).

⁴¹ *Albury*, 551 A.2d at 59.

⁴² *State v. Swan*, 2020 WL 7259626, at *20 (Del. Super. Feb. 21, 2020), *aff'd*, 248 A.3d 839 (Del. 2021).

For the reasons discussed above, and after a thorough review of the record in this case and the postconviction proceedings, the Motion for Postconviction Relief is **DENIED**.

IT IS SO ORDERED.

/s/ Craig A. Karsnitz
Craig A. Karsnitz

cc: Prothonotary
Patrick J. Collins, Esquire