IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	:	
	:	
v.	:	
	:	
DESHAUN J. HARRIS,	:	I.D. No. 2005002325
	:	
Defendant.	:	
	:	

ORDER

Submitted: August 6, 2026
Decided: November 25, 2026

On this 25th day of November, after considering Defendant DeShaun Harris's Motion for Postconviction Relief, trial counsel's Response, the State's Response, Mr. Harris's Reply, the Commissioner's Reports and Recommendation, and the record in this case, **IT APPEARS THAT:**

1. On May 3, 2021, a Kent County grand jury indicted Defendant DeShaun Harris, charging him with two counts of Robbery in the First Degree; Assault in the First Degree; Possession of a Firearm During the Commission of a Felony ("PFDCF"); Burglary in the First Degree; Possession of a Firearm by a Person Prohibited; Aggravated Menacing; Wearing a Disguise During the Commission of a Felony; two counts of Conspiracy in the Second Degree; two counts of Assault in the Third Degree; Theft; Aggravated Act of Intimidation; and

Breach of Conditions of Bond During Commitment.[1] Following a four-day trial, the jury found Mr. Harris guilty of:

> Two counts of Robbery [in the] First Degree, Assault [in the] Second Degree as a lesser included offense of Assault [in the] First Degree, Burglary [in the] First Degree, Wearing a Disguise During the Commission of a Felony, two counts of Conspiracy [in the] Second Degree, two counts of Assault [in the] Third Degree, Theft, Aggravated Act of Intimidation, and Breach of Conditions of Bond During Commitment, and not guilty of PFDCF, Assault [in the] First Degree, and Aggravated Menacing.[2]

On October 10, 2022, this Court sentenced Mr. Harris to "an aggregate 29 years of Level V incarceration followed by decreasing levels of supervision."[3]

2. Mr. Harris appealed his conviction to the Delaware Supreme Court.[4] On appeal, Mr. Harris contended this Court erred by admitting "prison recordings over defense counsel's objection."[5] On July 14, 2023, the Delaware Supreme Court affirmed Mr. Harris's conviction.[6]

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[1] Harris v. State, 301 A.3d 1175, 1179 (Del. 2023) (This indictment superseded an earlier indictment, adding the counts of Aggravated Act of Intimidation, Breach of Conditions of Bond During Commitment, and the related conspiracy charges).

[2] Id. At 1180. Mr. Harris was acquitted of all gun charges.

[3] Id.

[4] Id.

[5] Id. At 1179.

[6] Id. At 1184.

3. On August 4, 2023, Mr. Harris filed a *pro se* Motion for Postconviction Relief under Superior Court Criminal Rule 61, accompanied by a Motion for Appointment of Counsel.[7] The Court granted Mr. Harris's Motion for Appointment of Counsel on August 9, 2023.[8] The Office of Conflicts Counsel promptly appointed counsel to represent Mr. Harris. The Court then referred Mr. Harris's matter to a Superior Court Commissioner for proposed findings of fact and recommendations of law.[9] The Commissioner issued an initial scheduling order on February 16, 2024.[10]

4. Postconviction counsel filed a Motion to Withdraw as Counsel on May 15, 2024, indicating that, after a thorough review of Mr. Harris's case, he found no meritorious claims for postconviction relief.[11] Additionally, postconviction counsel filed a Motion for Correction of Illegal Sentence asserting the counts of Robbery in the First Degree and Theft should have merged for the purpose of sentencing.[12] The

[7] Crim. ID. No. 2005002325A D.I. 61 (Aug. 4, 2023) (unless otherwise stated, all docket items cited are tied to this criminal action number); D.I. 62 (Aug. 4, 2023).

[8] D.I. 63 (Aug. 9, 2023).

[9] D.I. 69 (Oct. 3, 2023).

[10] D.I. 70 (Feb. 16, 2024).

[11] D.I. 71 (May 15, 2024).

[12] D.I. 73 (May 28, 2024).

Court granted both motions on July 2, 2024, correcting Mr. Harris's sentence and permitting postconviction counsel to withdraw.[13]

5. Mr. Harris filed a "Motion to Amend Post-Conviction Pursuant to Rule 61" on July 15, 2024.[14] Mr. Harris alleged his trial counsel's ("Trial Counsel") representation of him fell below an objective standard of reasonableness.[15] Specifically, Mr. Harris contended Trial Counsel failed to (1) "investigate any defense or mitigation;" (2) "assist defendant in trial preparation or plea;" (3) "effectively cross-examine State witnesses;" and (4) "object to unnecessary suggestive photo identification [sic], prejudicial testimony, and prejudicial stipulation [sic]."[16] Mr. Harris also included several complaints unrelated to ineffective assistance of counsel, positing: (1) the "trial court abused its discretion in allowing prosecutorial misconduct by improper vouching and false testimony;" (2) a violation of Mr. Harris's 5th Amendment right to be free from double jeopardy; and (3) a violation of Mr. Harris's 14th Amendment right to a fair trial "due to entry of unnecessarily suggestive photo identification [sic].[17]

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[13] D.I. 78 (July 3, 2024).

[14] D.I. 81 (July 15, 2024).

[15] Id. at 1-2.

[16] Id. at 2.

[17] Id. at 2-3.

6. Shortly thereafter, on August 9, 2024, Mr. Harris filed a letter asking the Court to provide him a copy of State's Exhibit 9 presented during his trial.[18] Mr. Harris filed another letter on October 8, 2024, seeking permission to amend his Motion for Postconviction Relief a second time.[19] The Commissioner granted Mr. Harris's request to file an amended motion.[20] After receiving no objection from the State, the Commissioner also provided Mr. Harris a copy of State's Exhibit 9.[21] Upon viewing State's Exhibit 9, Mr. Harris contended "this is not the photo that the State produced to the jury and not the photo that the detective testified to showing Mr. Baker on May 10, 2020 to establish identification in my case."[22] William Baker, one of the victims in this case, positively identified Mr. Harris during both the initial investigation and Mr. Harris's trial.[23]

7. Mr. Harris requested an evidentiary hearing to develop a record regarding State's Exhibit 9.[24] The Commissioner reviewed "all of the photographic

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[18] D.I. 85 (Aug. 9, 2024).

[19] D.I. 90 (Oct. 16, 2024).

[20] D.I. 91 (Oct. 22, 2024).

[21] D.I. 95 (Dec. 9, 2024) (State's Exhibit 9 contains a photograph of Mr. Harris that police showed to Mr. Baker during the course of their investigation).

[22] D.I. 96 (Jan. 2. 2025).

[23] Harris, 301 A.3d at 1177-79.

[24] D.I. 96.

exhibits admitted at trial," and concluded the copy of State's Exhibit 9 sent to Mr. Harris accurately depicted the photograph marked during the trial as State's Exhibit 9.[25] Consequently, the Commissioner denied Mr. Harris's request for an evidentiary hearing.[26]

8. Mr. Harris next requested a copy of Mr. Baker's criminal record.[27] The State objected, arguing Mr. Baker's criminal history "came out during trial and should be available to [Mr. Harris] through the transcripts."[28] The Commissioner found Mr. Baker's relevant criminal history accessible to Mr. Harris by reviewing the transcripts of Mr. Baker's trial testimony.[29] As a result, the Commissioner denied Mr. Harris's request for a copy of Mr. Baker's criminal record.[30]

9. Mr. Harris filed a final Amended Motion for Postconviction Relief on April 15, 2025.[31] Mr. Harris set forth six grounds for postconviction relief: (1) Trial Counsel failed to prevent the State from introducing prison phone calls without first

[25] D.I. 97 (Jan. 29, 2025).

[26] Id.

[27] D.I. 98 (Jan. 30, 2025).

[28] D.I. 100 (Mar. 7, 2025).

[29] D.I. 101 (Mar. 12, 2025).

[30] Id.

[31] D.I. 103 (Apr. 15, 2025) (hereinafter, "Am. Mot for Postconviction Relief at __").

authenticating that the voice on the call belonged to Mr. Harris; (2) Trial Counsel failed to move for the suppression of Detective Mullaney's pre-trial identification of Mr. Harris; (3) Trial Counsel and Mr. Harris's appellate counsel ("Appellate Counsel") were ineffective for failing to investigate the circumstances around Mr. Baker's testimony fully; (4) the Court erred by permitting testimony from Detective Mullaney concerning his prior encounters with Mr. Harris; (5) Trial Counsel failed to object to Detective Mullaney's testimony regarding those prior encounters; and (6) Trial Counsel failed to provide Mr. Harris sufficient time to review discovery materials before trial.[32] Mr. Harris further posited he "was denied altogether his Fifth, Sixth, and Fourteenth Amendment rights to due process by his trial and appellate [counsel's] failure to subject the [prosecution's] case to adversarial testing in complicity with the trial judge who failed to enforce counsel obligations [sic]."[33]

10. Trial Counsel filed an affidavit on August 7, 2025, responding to Mr. Harris's allegations.[34] Notably, Trial Counsel's affidavit only addressed three of Mr. Harris's claims. Trial Counsel explained she did object to the admission of the prison phone calls. Trial Counsel outlined that her objection resulted in further redactions of the calls, as well as a concession by the State that inmates sometimes use other

[32] Id. at 2-15.

[33] Id. at 17.

[34] D.I. 110 (Aug. 7, 2025).

inmates' identification numbers to place phone calls.[35] Trial Counsel averred she found no basis to file a motion to suppress.[36]

11. On August 12, 2025, Mr. Harris filed a letter with the Court requesting an evidentiary hearing.[37] At that time, the State had not yet filed a response to Mr. Harris's Amended Motion for Postconviction Relief. Accordingly, the Commissioner deferred decision on the necessity for an evidentiary hearing until after briefing completed.[38]

12. The State filed its Response on September 8, 2025.[39] Like Trial Counsel's affidavit, the State's Response only addressed three of Mr. Harris's claims. The State argued Mr. Harris's three claims were meritless, in part, because Mr. Harris could not demonstrate any prejudice from Trial Counsel's strategic decisions.[40]

13. After reviewing Mr. Harris's matter, the Commissioner determined that both the State and Trial Counsel failed to address three of Mr. Harris's claims substantively.[41] The Commissioner identified an irregularity in the way Mr. Harris

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[35] Id. at 1.

[36] Id. at 2.

[37] D.I. 111 (Aug. 12, 2025).

[38] Id.

[39] D.I. 112 (Sept. 8, 2025).

[40] Id. at 3-4.

[41] D.I. 113 (Sept. 9, 2025).

numbered his claims as the likely cause of the mistake.[42] She afforded Trial Counsel an extension to file an affidavit addressing the remaining claims. The Commissioner also allowed the State an opportunity to review Trial Counsel's updated filing before its amended response deadline.[43] Additionally, the Commissioner requested Appellate Counsel file an affidavit addressing Mr. Harris's claims.[44]

14. Trial Counsel filed an amended affidavit addressing all of Mr. Harris's claims on October 10, 2025.[45] Trial Counsel disagreed with Mr. Harris's characterization of both Detective Mullaney's testimony and Trial Counsel's strategic decisions regarding that testimony.[46] As to Mr. Harris's contention that Trial Counsel failed to provide him adequate time to review discovery, Trial Counsel explained she became aware of a volume of prison calls on December 17, 2020.[47] She discussed those calls with Mr. Harris, recalling that Mr. Harris presented an "adamant denial that any of [the] conversations involved the affidavit in the case."[48]

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[42] Id. at 1.

[43] Id. at 1-2.

[44] Id. at 2.

[45] D.I. 115 (Oct. 10, 2025).

[46] Id. at 2-3.

[47] Id. at 3 (Trial Counsel's affidavit notes this date as December 17, 2021. Based on the context of the affidavit and the timeline of the case docket, the Court understands the December 17, 2021, date to be a typographical error in the affidavit).

[48] Id.

Trial Counsel attempted to object to the introduction of the calls based on Mr. Harris's inability to hear all of the calls before trial, but that objection proved unsuccessful.[49] She concluded that additional time to review the calls with Mr. Harris was unlikely to have affected trial strategy or the ultimate outcome of Mr. Harris's case.[50]

15. The State filed its Supplemental Response on November 26, 2025.[51] The State maintained that Mr. Harris failed "to assert any claim that [rose] to the level of ineffective assistance of counsel."[52] Regarding Mr. Harris's claim related to his opportunity to review prison calls and video recordings of those calls, the State reiterated Trial Counsel's representations that Mr. Harris possessed ample time to review that evidence.[53]

16. Mr. Harris filed his Reply on December 29, 2025.[54] Therein, Mr. Harris argued that Trial Counsel's alleged failures prevented Mr. Harris from fully considering and entering a guilty plea.[55] Mr. Harris asserted that Trial Counsel's

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[49] Id.

[50] Id.

[51] D.I. 118 (Nov. 26, 2025).

[52] Id. at 2.

[53] Id. at 3.

[54] D.I. 121 (Dec. 29, 2025).

[55] Id. at 2.

failure to review discovery with him should be analyzed under the standard set forth in United States v. Cronic.[56] For the first time, Mr. Harris requested the Court grant him relief by allowing him to enter a plea agreement previously offered to him by the State.[57] Additionally, Mr. Harris contended Trial Counsel's cumulative errors deprived him of effective assistance of counsel.[58] Mr. Harris alleged Trial Counsel "had recently been disciplined by the Office of Disciplinary Counsel [sic] for unprofessional conduct."[59]

17. On December 31, 2025, Mr. Harris filed a "Motion for Time Extension and Evidentiary Hearing."[60] Mr. Harris reiterated his allegation that Trial Counsel had recently been subject to discipline for professional misconduct.[61] Mr. Harris also renewed his request for an evidentiary hearing, arguing Trial Counsel's disciplinary status needed to be further explored.[62] The Commissioner granted Mr.

[56] 466 U.S. 648 (1984).

[57] D.I. 121 at 3.

[58] Id. at 4.

[59] Id. at 4.

[60] D.I. 122 (Dec. 31, 2025).

[61] Id. at 2.

[62] Id.

Harris a brief extension to request clarification from the Office of Conflicts Counsel regarding any potential discipline relating to Trial Counsel.[63]

18. The Office of Conflicts Counsel provided clarification by way of letter on January 9, 2026.[64] The Chief Conflicts Counsel indicated she was "not aware" of any disciplinary actions against Trial Counsel.[65] After receiving that letter, Mr. Harris wrote a letter to the Court to apologize for the misunderstanding and requesting the Court "move forward" with his Motion for Postconviction Relief.[66]

19. The Commissioner issued her first Report and Recommendation (the "First Report") on March 31, 2026.[67] The First Report found Mr. Harris's claims survived the procedural bars of Superior Court Criminal Rule 61.[68] After reviewing the record, however, the Commissioner concluded in the First Report that each of Mr. Harris's claims was meritless.[69] Mr. Harris did not file any objections to the First Report.

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[63] D.I. 123 (Jan. 6, 2026).

[64] D.I. 124 (Jan. 9, 2026).

[65] Id.

[66] D.I. 125 (Jan. 22, 2026).

[67] D.I. 127 (Mar. 31, 2026).

[68] Id. at 8.

[69] Id. at 13.

20. Upon the expiration of Mr. Harris's window to object to the First Report, the Court began its review of the First Report and the record. During that review, the Court discovered a discrepancy in the First Report. Specifically, in the conclusion of the First Report, there was a reference to "Appellate Counsel's affidavit."[70] Based, in part, on "Appellate Counsel's affidavit," the First Report read, "Appellate Counsel represented Harris in a competent fashion."[71] The Court's review of the record, however, revealed that Appellate Counsel never filed an affidavit with the Court.[72]

21. After that discrepancy was discovered, the Court referred the matter back to the Commissioner for further review.[73] The Commissioner issued a corrected Report and Recommendation (the "Second Report") on July 20, 2026.[74]

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[70] Id.

[71] Id. at 14.

[72] The Commissioner, by way of letter, identified Mr. Harris's claim against Appellate Counsel and requested Appellate Counsel file an affidavit. See D.I. 113. For reasons that remain unclear, Appellate Counsel never received that correspondence, and was omitted from future correspondence from the Court. Appellate Counsel did not file an affidavit in this matter.

[73] D.I. 128 (July 17, 2026).

[74] D.I. 129 (July 20, 2026) (the Commissioner determined it was unnecessary to request an affidavit from Appellate Counsel. Given the extremely sparse nature of Mr. Harris's singular allegation against Appellate Counsel, the Court agrees that claim can be resolved without Appellate Counsel providing an affidavit).

As with the First Report, Mr. Harris declined to file any objections to the Second Report.

22. Under Superior Court Criminal Rule 62, a party wishing to object to any portion of a Commissioner's proposed findings of fact and recommendations of law must serve those objections within 10 days of a report's issuance. Mr. Harris declined to file any objections to the Second Report. Accordingly, he waived his ability to object to any findings made in the Second Report.

23. The Court concurs with the ultimate conclusion reached in the Second Report – that Mr. Harris's claims of ineffective assistance of counsel are not subject to any procedural bars, but are meritless and should be denied. Nevertheless, given the discrepancy regarding the completeness of the record reviewed by the Commissioner, the Court declines to adopt the Second Report. Instead, the Court has conducted a *de novo* review of the record in its entirety, and will consider the merits of each of Mr. Harris's claims.

24. Claims of ineffective assistance of counsel are evaluated under the two-prong test elucidated in Strickland v. Washington.[75] For the first prong, Mr. Harris must establish that Trial Counsel's representation fell below an objective standard of reasonableness.[76] For the second prong, he must show Trial Counsel's deficient

[75] 466 U.S. 668, 668 (1984).

[76] Green, 238 A.3d at 174.

representation caused substantial prejudice.[77] The Court need not "address both components of the inquiry if the defendant makes an insufficient showing on one."[78]

25. Mr. Harris's first claim centers on the admission of prison phone calls into evidence.[79] Although couched as a claim of ineffective assistance of counsel, Mr. Harris largely appears to contest the Court's rulings regarding the admissibility of that evidence. As detailed in the Delaware Supreme Court's affirmance of Mr. Harris's conviction, Trial Counsel *did* object to the introduction of those recordings.[80] Although those objections ultimately proved unsuccessful, Trial Counsel did succeed in gaining concessions from the State regarding the presentation of that evidence to the jury.[81]

26. Given that Trial Counsel objected to the admission of the prison calls, she successfully preserved that evidentiary issue for appeal. Mr. Harris filed a direct appeal to the Delaware Supreme Court based largely on the admissibility of the prison calls.[82] In its consideration of Mr. Harris's appeal, the Delaware Supreme

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[77] Id.

[78] Strickland, 466 U.S. at 697.

[79] Am. Mot. for Postconviction Relief at 2-3.

[80] Harris, 301 A.3d at 1178-79.

[81] Id. at 1184 n.46.

[82] Id. at 1180.

Court reviewed, in extensive detail: the admission of the prison calls; the agreed-upon redactions; the creation of a transcript agreed upon by the parties; the foundation laid by the State to authenticate the calls; and the limiting instruction administered by the Court. The Delaware Supreme Court affirmed.[83] Thus, as Trial Counsel took the appropriate steps to mitigate the impact of the prison calls, she did not render ineffective assistance of counsel regarding those calls. That her efforts were largely limited to mitigation rather than exclusion does not render her performance deficient.

27. Mr. Harris's second claim asserts Trial Counsel failed to move for the suppression of pretrial identifications made by Detective Mulaney and "subsequent victims [sic]."[84] Mr. Harris has failed to establish a sufficient prejudicial effect from any pretrial identification of him. One of the victims, Mr. Baker, testified he was "a thousand[-]percent sure" that Mr. Harris attacked him.[85] A second victim, Christine Brittingham, testified she knew Mr. Harris, considered him a friend, and did not believe he intended to hurt her.[86] As detailed in the Delaware Supreme Court's opinion, there were also phone calls and corresponding affidavits establishing that

[83] Id. at 1185.

[84] Am. Mot. for Postconviction Relief at 4.

[85] Trial Tr. Sept. 8, 2021, Volume B, at 52.

[86] Trial Tr. Sept. 13, 2021, Volume C, at 22-25.

Mr. Harris attempted to convince Mr. Baker to change his testimony.[87] Based on that evidence, any error by Trial Counsel regarding the admissibility of Detective Mulaney's identification does not satisfy the prejudice prong of Strickland.

28. Detective Mulaney's identification of Mr. Harris during trial consisted of the State asking him whether he had observed any surveillance video. Detective Mulaney stated:

> That's correct. The incident was – or I should say the moments leading up to the incident as well as after depicted an individual that resembled a DeShaun Harris that I've had previous encounters with as well as wearing the same clothing that I had recently seen a DeShaun Harris wear.[88]

Trial Counsel attacked that identification on cross-examination, drawing the jury's attention to the fact that the individual in the video was wearing a mask, the video lasted less than 90 seconds, and Detective Mulaney's identification was not based upon "facial identity," or "distinctive marks such as a tattoo or a birthmark or a limp."[89]

29. The Court finds Trial Counsel made a strategic decision to contest Detective Mulaney's testimony through cross-examination rather than objection.

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[87] See Harris, 301 A.3d at 1182.

[88] Trial Tr. Sept. 9, Volume B, at 10-11.

[89] Id. at 24-26.

Though the Delaware Supreme Court has expressed "serious reservations about the admission of this type of identification testimony,"[90] the Court does not find such admonitions foreclose defense attorneys from execution of the type of strategic decision made by Trial Counsel. As Detective Mulaney's testimony served as key evidence that Mr. Harris allegedly possessed a firearm during the commission of the offenses – one of the few charges of which the jury acquitted Mr. Harris – the Court cannot find that Trial Counsel's decision to undermine Detective Mulaney's credibility was unreasonable.

30. Mr. Harris's third claim alleges, "Trial Counsel Appellate Counsel [sic] were all ineffective when they failed to determine whether the victim Mr. Baker was threaten [sic] by movant not by individuals."[91] Mr. Harris argues that he denied ever threatening Mr. Baker, or Mr. Baker's family, to compel Mr. Baker not to testify.[92] Mr. Harris, continuing to attack the admissibility of the prison phone calls, posits the State failed to present any evidence tying him to the alleged "individuals" that attempted to shape Mr. Baker's testimony.[93] Mr. Harris also contends Trial Counsel

[90] See Thomas v. State, 207 A.3d 1124 (Del. 2019) (TABLE).

[91] Am. Mot. for Postconviction Relief at 6.

[92] Id.

[93] Id. at 7.

should have investigated whether Mr. Baker received any compensation from the State in exchange for testifying against Mr. Harris.[94]

31. As explained previously – and set forth in greater detail in the Delaware Supreme Court's analysis of Mr. Harris's trial – the prison calls Mr. Harris contests were properly admitted to show Mr. Harris attempted to influence Mr. Baker's testimony.[95] During trial, the State presented evidence that Mr. Harris communicated with other individuals instructing them to secure affidavits from Mr. Baker. The State, contrary to Mr. Harris's postconviction arguments, did not attempt to show that Mr. Harris himself confronted Mr. Baker about his planned testimony. Accordingly, it is unclear what Mr. Harris believes would have been accomplished by either of his attorneys investigating whether Mr. Harris – who was incarcerated at the time Mr. Baker allegedly engaged with other individuals regarding his testimony – attempted to guide Mr. Baker's testimony personally rather than through Mr. Harris's associates.[96]

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[94] Id.

[95] See Harris, 301 A.3d at 1184 (finding the State met its burden of authentication regarding the prison calls).

[96] The Court notes that the Commissioner initially requested Appellate Counsel file an affidavit addressing this concern. After publishing the First Report and subsequently discovering that Appellate Counsel never filed an affidavit in this matter, the Commissioner determined the record was sufficient to resolve Mr. Harris's postconviction claims without requiring Appellate Counsel to address them. The Court, having reviewed the record in its entirety, agrees that this claim can be resolved without an affidavit from Appellate Counsel. First, Mr. Harris's singular allegation against Appellate Counsel fails to allege any misconduct by Appellate Counsel. Appellate Counsel is mentioned in passing at the outset of the claim, but nowhere in the body of his argument does

32. Mr. Harris's allegation regarding whether Trial Counsel sufficiently investigated any compensation Mr. Baker received from the State proves equally unavailing. If the State compensated Mr. Baker in any way for his testimony, the State was required to disclose that information to Trial Counsel. The State made no such disclosure, allowing Trial Counsel to conclude reasonably that the State did not compensate Mr. Baker. As Mr. Baker was one of the victims of the alleged crimes committed by Mr. Harris, it is unsurprising he chose to testify against Mr. Harris absent any agreement with the State.

33. Mr. Harris further asserts Trial Counsel failed to cross-examine Mr. Baker.[97] The trial transcript of Mr. Baker's testimony refutes that assertion. Trial Counsel extensively cross-examined Mr. Baker about the surveillance footage; actions he took during and after the incident; his state of intoxication during the incident; and his recollection of signing the multiple affidavits presented by the

Mr. Harris point to any action or inaction on the part of Appellate Counsel that he contends fell below an objective standard of reasonableness. Second, as noted above, Mr. Harris has failed to show any prejudicial effect from his attorney's alleged failure to investigate fully whether Mr. Harris himself threatened or coerced Mr. Baker to influence his testimony. The State's presentation of the evidence suggested Mr. Harris communicated with individuals who were not incarcerated to have those individuals approach Mr. Baker. The State did not argue Mr. Harris himself took those actions. Finally, Mr. Harris did not object to either the First Report or the Second Report. If Mr. Harris believed the Commissioner overlooked some alleged misconduct by Appellate Counsel, Mr. Harris was presented with opportunities to raise that concern. He declined to do so.

[97] Am. Mot. for Postconviction Relief at 6-7.

State.[98] Mr. Harris has failed to show Trial Counsel's cross-examination of Mr. Baker fell below an objective standard of reasonableness.

34. Mr. Harris's fourth claim contends the Court erred by allowing Detective Mullaney to identify a masked suspect depicted in surveillance footage as Mr. Harris.[99] This claim appears duplicative of Mr. Harris's second claim regarding Trial Counsel's decision not to object to Detective Mullaney's identification of Mr. Harris. For the same reasons outlined above, Mr. Harris has failed to satisfy either prong of Strickland regarding this claim. Mr. Harris's argument in support of this claim does not pinpoint any action or inaction taken by Trial Counsel. To the extent Mr. Harris seeks to challenge the admissibility of Detective Mullaney's identification of him, he waived that challenge by not raising it in his direct appeal.

35. Mr. Harris's fifth claim again focuses on Detective Mullaney's testimony – specifically, on Detective Mullaney's reference to prior encounters with Mr. Harris.[100] Mr. Harris argues the reference to prior encounters permitted the jury to conclude "that the movant is a career criminal."[101] He posits again that Detective

[98] Trial Tr. Sept. 9, Volume B, at 62-79.

[99] Am. Mot. for Postconviction Relief at 12.

[100] Am. Mot. for Postconviction Relief at 14.

[101] Id.

Mullaney's identification testimony was inadmissible, and that Trial Counsel's failure to object to it constituted ineffective assistance of counsel.[102]

36. This claim, much like Mr. Harris's second and fourth claim, primarily attacks whether Detective Mullaney's testimony should have been admissible at trial. As previously reviewed, Trial Counsel made the strategic decision not to object to that testimony. Even if Trial Counsel *had* objected to the testimony, Mr. Harris cannot show Trial Counsel would have been successful. The Delaware Supreme Court explained in Saavedra v. State that:

> Before a law enforcement witness uses a video clip or photograph to identify the defendant, due caution should be exercised to ensure that a proper foundation is laid establishing, to the trial court's satisfaction, that the witness has a special familiarity with the defendant that would put him in a better position than the jury to make the identification. And[,] in determining whether the witness occupies such a position, the court should also consider whether the images from the identification is to be made [sic] "are not either so unmistakable clear or so hopelessly obscure that the witness is no better suited than the jury to make the identification."[103]

37. Detective Mullaney testified regarding a video depicting a masked individual that, aside from his face being obscured, was readily visible. Thus, the images were neither "unmistakably clear or so hopelessly obscure" that Detective

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[102] Id.

[103] 225 A.3d 364, 380-81 (Del. 2020) (quoting U.S. v. Jackman, 48 F.3d 1, 4-5 (1st Cir. 1995)).

Mullaney's identification provided no value to the jury. As for the foundation of his identification, Detective Mullaney once mentioned that he possessed familiarity with Mr. Harris based on previous encounters. Had Trial Counsel pressed for a stronger foundation, Detective Mullaney's testimony would have expounded on *why* the detective knew Mr. Harris so well, strengthening any potential assumptions relating to Mr. Harris's prior criminal behavior. The Court does not find Trial Counsel's declination to pursue that line of questioning to be an unreasonable strategic decision. Moreover, Mr. Harris has failed to demonstrate any substantial prejudice stemming from that decision.

38. Mr. Harris's sixth and final claim argues Trial Counsel failed to review discovery with Mr. Harris.[104] Trial Counsel denies that allegation.[105] Mr. Harris further asserts that, had he reviewed the prison phone calls and accompanying surveillance videos before trial, he would have potentially "negotiated a more favorable plea" deal from the State.[106] Nothing in the record suggests that Mr. Harris ever contemplated resolving his case through entry of a guilty plea.

[104] Am. Mot. for Postconviction Relief at 15.

[105] D.I. 115 at 3.

[106] Am. Mot. for Postconviction Relief at 15.

39. The record reflects that Trial Counsel sent Mr. Harris discovery "well prior to trial."[107] Trial Counsel averred she informed Mr. Harris that some prison surveillance footage of phone calls was omitted from discovery because the State concluded those videos clearly depicted someone else using Mr. Harris's SBI number to place the calls.[108] Mr. Harris knew the State possessed the phone calls it intended to introduce at trial, knew the contents of those calls formed the basis for the intimidation and breach of condition charges he faced, and knew the State possessed surveillance videos it believed showed Mr. Harris placing those phone calls. Mr. Harris has not explained how further review of the calls or the accompanying surveillance footage would have enabled him to "negotiate a more favorable plea instead of the risk of trial [sic]."[109]

40. Finally, in his Reply, Mr. Harris raised two additional points for the Court's consideration.[110] First, Mr. Harris argues the Court should review his claim that Trial Counsel failed to provide him discovery under the standard set forth in

[107] D.I. 71, Mot. to Withdraw as Postconviction Counsel, at 20-21 (May 16, 2024) (citing Trial Counsel's activity log).

[108] D.I. 115 at 3.

[109] Am. Mot. for Postconviction Relief at 15.

[110] D.I. 121 at 2-3. Despite the prompt filing of Mr. Harris's Reply, these additional arguments were not addressed in either the First Report or the Second Report.

Cronic.[111] "In Cronic, the Supreme Court recognized that, when the accused is completely denied counsel at a critical stage of the judicial proceedings, the accused is excused from demonstrating prejudice under Strickland."[112] The Cronic standard applies when a defendant was denied counsel entirely at a critical stage of the litigation process; when "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing;" or when "counsel is called upon to render assistance [in] circumstances [under which] competent counsel very likely could not."[113] "But, bad lawyering, regardless of *how* bad, does not support the Cronic presumption."[114]

41. Nothing in the record suggests Mr. Harris was deprived of counsel at any stage, much less any critical stage. Trial Counsel met with Mr. Harris, provided him with discovery, and discussed case strategy with him. During trial, Trial Counsel subjected the State's case to adversarial testing, including objections that resulted in concessions from the State and cross-examination that undermined witness credibility. The jury returned not-guilty verdicts on several of the charges

[111] Id. at 3.

[112] Urquhart v. State, 203 A.3d 719, 726 (Del. 2019).

[113] Id. at 729 (internal quotations omitted) (quoting Cronic, 466 U.S. at 658-59).

[114] Id. at 730 (emphasis original) (internal quotations omitted) (quoting Sullivan v. State, 1998 WL 231264, at *22 (D. Del. Apr 30, 1998) aff'd sub nom. Sullivan v. Snyder, 187 F.3d 626 (3d Cir. 1999)).

against Mr. Harris – further indicating that Trial Counsel's representation did not approach the level of ineffectiveness required to trigger a Cronic analysis.

42. Mr. Harris also states in his Reply that, should the Court be unwilling to reverse his convictions based on his postconviction claims, he would accept a renewed plea offer from the State.[115] Mr. Harris would require this plea deal "be less than the original 8-75 years open plea because [he] was acquitted after trial of charges in [the] plea agreement."[116] He notes that he "is still willing to accept some accountability[,] but it must be balanced within the framework of fundamental fairness."[117] As the Court does not find Mr. Harris's postconviction claims meritorious, the Court declines to exercise any authority it may have to craft the specific relief that Mr. Harris now desires.

NOW, THEREFORE, after a *de novo* review of the record in this action, and consideration of the parties' arguments and the Commissioner's Reports dated March 31, 2026, and July 20, 2026:

IT IS HEREBY ORDERED that the Court declines to adopt the Second Report. For the reasons stated above, Mr. Harris has failed to satisfy the Strickland

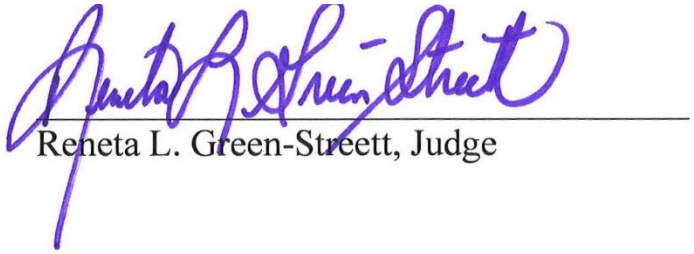
[115] D.I. 121 at 3.

[116] Id.

[117] Id.

test to establish ineffective assistance of counsel. Accordingly, Mr. Harris's Motion for Postconviction Relief Pursuant to Superior Court Criminal Rule 61 is **DENIED**.

IT IS SO ORDERED.



Reneta L. Green-Streett, Judge