



IN THE SUPREME COURT OF THE STATE OF DELAWARE

VINCENT STALLINGS,)
)
 Defendant – Below,)
 Appellant,)
)
 v.) No. 449, 2018
)
 STATE OF DELAWARE,)
)
 Plaintiff – Below,)
 Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE’S ANSWERING BRIEF

ANDREW J. VELLA (ID No. 3549)
Deputy Attorney General
Department of Justice
Carvel State Office Building
820 N. French Street, 7th Floor
Wilmington, DE 19801
(302) 577-8500

DATE: December 26, 2018

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	ii
NATURE AND STAGE OF THE PROCEEDINGS	1
SUMMARY OF THE ARGUMENT	3
STATEMENT OF FACTS	5
ARGUMENT	7
I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED STALLINGS MOTION SEEKING POSTCONVICTION RELIEF.....	7
II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED STALLINGS MOTION SEEKING POSTCONVICTION RELIEF.....	16
III. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED STALLINGS' CLAIMS REGARDING SELF- REPRESENTATION.	29
IV. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT DETERMINED APPELLATE COUNSEL WERE NOT INEFFECTIVE.	38
CONCLUSION	41

TABLE OF CITATIONS

Cases

<i>Barker v. Wingo</i> , 407 U.S. 514 (1972).....	26
<i>Barnett v. State</i> , 2007 WL 1314664 (Del. May 7, 2007).....	15
<i>Bradley v. State</i> , 2007 WL 1599991 (Del. June 5, 2007).....	15
<i>Brawley v. State</i> , 1992 WL 353838 (Del. Oct. 7, 1992).....	17
<i>Brown v. Wainwright</i> , 665 F.2d 607 (5th Cir. 1982).....	33
<i>Buhl v. Cooksey</i> , 233 F.3d 783 (3d Cir. 2000).....	31, 33
<i>Cabrera v. State</i> , 840 A.2d 1256 (Del. 2004).....	23
<i>Dawson v. State</i> , 673 A.2d 1186 (Del. 1996).....	8, 16
<i>Dorman v. Wainwright</i> , 798 F.2d 1358 (11th Cir. 1986).....	34
<i>Faretta v. California</i> , 422 U.S. 806 (1975).....	31, 32, 34, 40
<i>Flamer v. State</i> , 585 A.2d 736 (Del. 1990).....	8, 17
<i>Gideon v. Wainwright</i> , 372 U.S. 335 (1963).....	31
<i>Grayson v. State</i> , 2016 WL 2935027 (Del. May 16, 2016).....	7
<i>Guy v. State</i> , 913 A.2d 558 (Del. 2006).....	23
<i>Jackson v. Ylst</i> , 921 F.2d 882 (9th Cir. 1990).....	32
<i>Johnson v. Zerbst</i> , 304 U.S. 458 (1938).....	32
<i>Key v. State</i> , 463 A.2d 633 (Del. 1983).....	26
<i>Martinez v. Court of Appeal of California, Fourth Appellate District</i> , 528 U.S. 152 (2000).....	32, 33

<i>Merritt v. State</i> , 2011 WL 285097 (Del. Jan. 27, 2011)	34
<i>Middlebrook v. State</i> , 802 A.2d 268 (Del. 2002).....	26
<i>Morrison v. State</i> , 135 A.3d 69 (Del. 2016)	31
<i>Neal v. State</i> , 80 A.3d 935 (Del. 2013)	39
<i>Outten v. State</i> , 720 A.2d 547 (Del. 1998).....	16, 21, 22
<i>Parker v. State</i> , 85 A.3d 682 (Del. 2014)	24
<i>Patterson v. Illinois</i> , 487 U.S. 285 (1988)	32, 33
<i>Patterson v. State</i> , 684 A.2d 1234 (Del. 1996).....	39
<i>Ploof v. State</i> , 75 A.3d 811 (Del. 2013).....	38
<i>Raulerson v. Wainwright</i> , 469 U.S. 966 (1984).....	32, 40
<i>Redden v. State</i> , 150 A.3d 768 (Del. 2016)	38
<i>Riley v. State</i> , 585 A.2d 719 (Del. 1990)	17
<i>Robinson v. State</i> , 562 A.2d 1184 (Del. 1989)	17
<i>Skinner v. State</i> , 575 A.2d 1108 (Del. 1992)	26
<i>Skinner v. State</i> , 607 A.2d 1170 (Del. 1992)	17
<i>Skinner v. State</i> , 1994 WL 91138 (Del. Mar. 3, 1994)	17
<i>Snowden v. State</i> , 672 A.2d 1017 (Del. 1996)	32
<i>Smith v. Robbins</i> , 528 U.S. 259 (2000).....	39
<i>Somerville v. State</i> , 703 A.2d 629 (Del. 1997)	15, 19, 23

<i>Stallings v. State</i> , 2015 WL 4065924 (Del. June 30, 2015).....	2
<i>State v. Page</i> , 2009 WL 1141738 (Del. Super. April 28, 2009)	8
<i>State v. Spencer</i> , 519 N.W.2d 357 (Iowa 1994).....	33
<i>State v. Stallings</i> , 2014 WL 3047800 (Del. Super. May 8, 2014)	27
<i>State v. Stallings</i> , 2018 WL 3655862 (Del. Super. July 31, 2018)	<i>passim</i>
<i>State v. Torres</i> , 2015 WL 1055966 (Del. Super. Mar. 3, 2015).	18, 39
<i>Stevenson v. State</i> , 469 A.2d 797 (Del. 1983)	17
<i>Stigars v. State</i> , 674 A.2d 477 (Del. 1996).	32
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	17, 20, 21, 23, 28, 36, 38
<i>Thomas v. Carroll</i> , 424 F. Supp. 2d 738 (D. Del. 2006)	32
<i>United States v. Cottrell</i> , 2006 WL 278562 (W.D.Tenn. Feb. 2, 2006).....	35
<i>United States v. Martin</i> , 25 F.3d 293 (6th Cir. 1995)	32, 40
<i>Walker v. State</i> , 2007 WL 481957 (Del. Feb. 15, 2007)	34
<i>Whitfield v. State</i> , 524 A.2d 13 (Del. 1987).....	23
<i>Williams v. State</i> , 56 A.3d 1053 (Del. 2012)	40
<i>Wilson v. Walker</i> , 204 F.3d 33 (2d Cir. 2000)	33
<i>Wright v. State</i> , 1992 WL 53416 (Del. Feb. 20, 1992).....	17
<i>Wright v. State</i> , 91 A.3d 972 (Del. 2014).	29
<i>Younger v. State</i> , 580 A.2d 552 (Del. 1990).....	8

Rules

D.R.E. 901(a) 23, 24

Del. Super. Ct. Crim. R. 4730

Del. Super. Ct. Crim. R. 4825

Del. Super. Ct. Crim. R. 61(i)(3) 3, 7, 8, 9, 10, 29, 37

Del. Super. Ct. Crim. R. 61(d)(2).....3, 9

Del. Super. Ct. Crim. R. 61(i)(5)9

NATURE AND STAGE OF THE PROCEEDINGS

On December 3, 2012, a New Castle County grand jury indicted Vincent Stallings (“Stallings”) on two counts of first degree murder, first degree robbery, first degree attempted robbery, second degree conspiracy, and several related firearms offenses. A2; A67-72. The charges in the December 3, 2012 indictment stemmed from crimes Stallings committed in September 2012. A67-72. The State reindicted Stallings on January 21, 2014, to include charges from an April 1, 2012 robbery. A7; A125-32. On February 21, 2014, Stallings filed three motions: a motion to sever a possession of a deadly weapon by a person prohibited (“PDWPP”) charge, a motion to dismiss, and a motion to sever certain other counts of the reindictment, *i.e.*, to sever the April 1, 2012, robbery from the September 1, 2012 attempted robbery, robbery, and murder. A8; A135-47. The Superior Court granted the motion to sever the PDWPP charge and denied the other motions. A8; A9; A10; A148-49.

On June 20, 2014, four days before jury selection was to begin, Stallings pled guilty to first degree murder, first degree robbery, and possession of a firearm during the commission of a felony (“PFDCF”). A11. On August 13, 2014, Stallings, through trial counsel, moved to withdraw his plea, and on August 20, 2014, Stallings, acting *pro se*, supplemented trial counsel’s motion. A11. The Superior Court denied the motion, but allowed for further briefing upon receipt of

the plea colloquy transcript. A11-12. Stallings submitted a *pro se* supplemental motion to withdraw his plea on October 21, 2014. A14. On October 23, 2014, Stallings' trial counsel advised the Superior Court there was no good faith basis to permit Stallings to withdraw his plea. A14. On December 19, 2014, at sentencing, the Superior Court reaffirmed its denial of Stallings' motion to withdraw his guilty plea. A15. The Superior Court sentenced Stallings to life in prison for first degree murder, twenty-five years at Level V for PFDCF, and three years at Level V for first degree robbery. A16; A224-25.

On direct appeal, Stallings' appellate counsel filed a non-merits brief pursuant to Supreme Court Rule 26(c). A228. This Court affirmed Stallings' convictions on June 30, 2015.¹ Stallings, acting *pro se*, filed his first motion seeking postconviction relief on December 9, 2015. A15-16. The Superior Court appointed postconviction counsel, who filed an Amended Motion for Postconviction Relief on June 12, 2017. A22. The Superior Court denied Stallings' postconviction motion on July 31, 2018.² A26. Stallings appealed the Superior Court's denial of his motion seeking postconviction relief. This is the State's answering brief.

¹ *Stallings v. State*, 2015 WL 4065924 (Del. June 30, 2015).

² *State v. Stallings*, 2018 WL 3655862 (Del. Super. July 31, 2018).

SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. The Superior Court did not abuse its discretion when it found that Stallings' claim regarding alleged defects in the guilty plea process were procedurally barred. The claim was procedurally barred by Superior Court Criminal Rule 61(i)(3) because Stallings failed to raise the issue on direct appeal. Moreover, Stallings failed to satisfy the pleading requirements of Superior Court Criminal Rule 61(d) to overcome his procedural bars. In any event, the court correctly determined that Stallings entered his guilty pleas knowingly and intelligently.

II. Appellant's argument is denied. The Superior Court did not abuse its discretion when it denied Stallings' postconviction motion. Trial counsel were not ineffective. Stallings knowingly and intelligently entered his guilty pleas, and trial counsel's tactical decisions regarding further investigation of certain evidence fell within bounds of professional reasonableness.

III. Appellant's argument is denied. The Superior Court did not abuse its discretion when it determined Stallings' claim regarding self-representation was procedurally barred. The claim was procedurally barred because Stallings failed to raise the issue on direct appeal. Moreover, Stallings failed to satisfy the pleading requirements of Superior Court Criminal Rule 61(d) to overcome his procedural

bars. In any event, the court correctly determined that Stallings actions demonstrated he no longer wished to pursue self-representation.

IV. Appellant's argument is denied. The Superior Court did not abuse its discretion when it concluded appellate counsel were not ineffective. The issues Stallings' contends appellate counsel should have raised on appeal were without merit. Moreover, Stallings failed to demonstrate prejudice as a result of appellate counsel's failure to raise meritless claims.

STATEMENT OF FACTS³

The Superior Court found the facts as follows:

On April 1, 2012, three individuals robbed the HMS truck stop in Newark, Delaware. While one of the perpetrators held a truck stop employee at gunpoint, two others gathered cash from the room. The perpetrators ultimately fled with \$50,000. The event was captured on video surveillance, and fingerprints identified John Slater as a possible participant in the crime. When he was interviewed by the police, Slater identified Stallings as the individual who held the employee at gunpoint.

On the night of September 11, 2012, two men targeted the same HMS truck stop. Although the men were unable to gain access to the cash room on this occasion, the attempted robbery was captured on video. One of the men participating in the attempted robbery wore a black mask. A few hours later, early in the morning on September 12, two men committed an armed robbery at a 7-Eleven convenience store near the HMS truck stop. Video footage of the robbery showed a woman entering the store, buying something, and leaving. Shortly thereafter, two armed men entered the store, one wearing a black mask and the other wearing a white mask. The individual in the black mask held the store employee, Mohammed Ullah, at gunpoint, while the white-masked individual gathered money and cigars from behind the counter. As the two assailants were leaving, the black-masked individual fatally shot Ullah.

Police arrested Stallings the following day and charged him with first degree murder, robbery, and related charges stemming from the truck stop and 7-Eleven incidents on September 11th and 12th. Stallings was indicted with two co-defendants, Andre Palmer and Vanisha Carson. The indictment did not include charges relating to the April 2012 robbery. The State indicated it would seek the death penalty on the murder charges.

³ Because Stallings pled guilty, the facts are taken directly from the Superior Court's order denying Stallings' postconviction motion. *Stallings*, 2018 WL 3655862, at *1–2 (internal footnotes omitted).

Police searched Stallings' home pursuant to a warrant and recovered a black mask and a firearm. DNA was recovered from the black mask and compared to Stallings's DNA. Stallings could not be excluded as a contributor to the DNA on the mask, and 99.9999% of every relevant population set could be excluded as a contributor. The caliber of the firearm matched a shell casing found at the scene of the murder. Police also learned that late in the morning of September 12, 2012, Stallings' fiancé asked him why he was "acting weird," and Stallings responded "I did something that I wasn't [supposed] to, but ... I don't wanna involve you and I'm sorry." Stallings went on to say he "just did something bad."

Palmer ultimately admitted he participated in the robberies on April 1, September 11, and September 12. Palmer pleaded guilty and gave a statement identifying himself as the individual wearing the white mask in the 7-Eleven surveillance and identifying Stallings as the black-masked assailant who shot Ullah. Carson admitted she gave Stallings and Palmer information to enable them to access the HMS cash room in April 2012. Carson also admitted she was the woman captured on video entering the 7-Eleven shortly before the robbery took place. Carson gave a statement implicating Stallings in the incidents on April 1 and September 12. Both Palmer and Carson agreed to testify against Stallings at trial.

ARGUMENT

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED STALLINGS MOTION SEEKING POSTCONVICTION RELIEF.

Question Presented

Whether the Superior Court abused its discretion when it denied Stallings motion seeking postconviction relief.

Standard and Scope of Review

This Court reviews the denial of postconviction relief for abuse of discretion and questions of law *de novo*.⁴

Merits of the Argument

On appeal, Stallings claims the Superior Court erred when it determined his claim that there was a “serious” defect in the plea process was procedurally barred by Superior Court Criminal Rule 61(i)(3). He also argues that the court should have found that trial counsel rendered ineffective assistance for failing to identify and correct the “serious procedural defect” in the plea. Stallings contends he did not enter his plea knowingly or intelligently as a result of trial counsel’s constitutionally deficient performance. Stallings arguments are unavailing.

⁴ *Grayson v. State*, 2016 WL 2935027, at *1 (Del. May 16, 2016).

Stallings’ claim regarding the entry of his guilty plea was procedurally barred.

When reviewing a motion for postconviction relief under Superior Court Rule 61, the court must first consider the procedural requirements of the rule before addressing any the merits.⁵ “To protect the procedural integrity of Delaware’s rules, the Court will not consider the merits of a post-conviction claim that fails any of Rule 61’s procedural requirements.”⁶

Under Rule 61(i)(3), a defendant who fails to raise any claim in the proceedings leading to conviction is barred from later bringing such a new claim for relief unless he can show: (A) cause for the default; and (B) actual prejudice.⁷ To establish cause sufficient to overcome the procedural default bar of Rule 61(i)(3), Stallings must show that an external impediment prevented him from constructing or raising the claim either at trial or on direct appeal.⁸ He must also demonstrate actual prejudice resulting from the alleged and previously unasserted error in order to satisfy the second prong of Rule 61(i)(3).⁹ Stallings has failed to do so.

Stallings’ claim that there was a “serious procedural defect” in the entry of his guilty plea cannot surmount his Rule 61(i)(3) bar by invoking the exception to

⁵ *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996); *Flamer v. State*, 585 A.2d 736, 747 (Del. 1990); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁶ *State v. Page*, 2009 WL 1141738, at *13 (Del. Super. April 28, 2009).

⁷ Del. Super. Ct. Crim. R. 61(i)(3).

⁸ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

⁹ *Id.* at 555-56.

the procedural bar under Rule 61(i)(5), which provides, “[t]he bars to relief in paragraphs (1), (2), (3) and (4) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to a claim that satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule.”¹⁰ Stallings does not present a claim that the Superior Court lacked jurisdiction over his conviction and sentence. And, subdivision (d) requires the movant to:

(i) plead[] with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted; or

(ii) plead[] with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant’s case and renders the conviction or death sentence invalid.¹¹

Stallings bears the burden of pleading with particularity that new evidence exists that would create a strong inference that he was actually innocent or that a new rule of constitutional law made retroactive to his case renders his conviction invalid. Considering Rule 61’s procedural requirements, the Superior Court correctly found:

Trial Counsel’s alleged ineffective assistance of counsel was the only argument Stallings advanced in support of his contention that there was cause for relief from his procedural defaults. Having failed in that showing, the Court need not consider whether Stallings sufficiently demonstrated prejudice under Rule 61(i)(3)(B). Stallings’ procedural default therefore bars these claims of legal error unless he can show

¹⁰ Super. Ct. Crim. R. 61(i)(3) and (5).

¹¹ Super. Ct. Crim. R. 61(d)(2).

that bar is inapplicable under Rule 61 (i)(5) because (1) the trial court lacked jurisdiction or (2) Stallings pleads with particularity that (a) new evidence creates a strong inference of actual innocence, or (b) a new rule of constitutional law retroactively applies to his case and renders his conviction invalid.

Stallings has not disputed jurisdiction or raised a new rule of constitutional law applicable to his case. Although, as discussed below, Stallings argues Trial Counsel failed to investigate cell phone records that could have lent support to Stallings' alibi, that argument does not even satisfy the standard for ineffective assistance, let alone amount to particularized pleading creating a strong inference of actual innocence. Accordingly, Rule 61(i)(3) bars Stallings' claims of legal error relating to the plea colloquy, the motion to withdraw, and his right to self-representation.¹²

Stallings now claims that the Superior Court mistakenly concluded that ineffective assistance of counsel was the sole basis for the cause of his procedural default. He unconvincingly argues that his "unawareness"¹³ of the "serious" procedural defect in the plea process and "defense counsel's continued representation of him on direct appeal"¹⁴ were additional causes of his procedural default. Stallings' newly minted causes for his procedural default simply amount to the same allegations of ineffective assistance. Because the Superior Court determined that trial counsel did not render ineffective assistance in relation to the entry of Stallings' guilty pleas, it did not abuse its discretion when it determined that Stallings' claim regarding the entry of his plea was procedurally barred by Rule 61(i)(3).

¹² *Stallings*, 2018 WL 3655862, at *10.

¹³ *Op. Brf.* at 11.

¹⁴ *Op. Brf.* at 11.

Stallings entered his guilty knowingly and intelligently.

In his first claim, Stallings argues that a clerical error amounted to a “procedural defect,” in his plea. He contends that a mistake as to the count number of the indictment and attendant criminal action number on the plea agreement, and the Superior Court’s reference at sentencing to the same incorrect count number and criminal action number, rendered his plea unknowing and unintelligent. This claim lacks merit.

The plea agreement Stallings signed indicated he would plead guilty to: Count I, Murder First Degree (IN14011607); Count XI, Robbery First Degree (IN14011592); and Count VII, PFDCF (IN14011588).¹⁵ The re-indictment reflects that: Count I, Murder First Degree, related to the death of Mohammed Ullah on September 12, 2012; Count XI, Robbery First Degree, related to the robbery of Tamika Wilson during which a firearm was displayed on April 1, 2012; Count VII, PFDCF, related to Stallings’ possession of a firearm during a robbery (set forth in Count VI of the indictment with an unidentified victim) that occurred on September 12, 2012.¹⁶ When Stallings tendered his guilty plea to the Court, the following exchange took place:

PROSECUTOR: This is the plea agreement in State of Delaware versus Vincent Stallings, Case No. 1209008698. The defendant will plead guilty to Count I of the indictment, murder in the first degree; to

¹⁵ A162.

¹⁶ A125, A129-30, A127-28.

Count II of the indictment, robbery in the first degree; and Count VII of the indictment, possession of a firearm during the commission of a felony.

* * *

THE COURT: Under the plea agreement that I'm holding up, the first charge to which you're pleading guilty says: "In violation of Delaware's criminal law, on September 12, 2012, in New Castle County, Delaware, you intentionally caused the death of Mohammed Ullah by shooting him." Did you do that?

THE DEFENDANT: Right.

THE COURT: The second charge to which you're pleading guilty says: "In violation of Delaware's criminal law, on April 1, 2012, in New Castle County, Delaware, when you were committing theft, you used force on Tamica Wilson with the intent to compel her to give you property and, while you were doing that, you or one of co-conspirators displayed to her what appeared to be a gun, a deadly weapon under the law." Did you do that?

THE DEFENDANT: Yes.

THE COURT: And, finally, under the plea agreement, you're pleading to a charge that says: "In violation of Delaware's criminal law, on April 1, 2012, in New Castle County, Delaware, you unlawfully possessed a firearm while you were committing the robbery first degree involving Tamica Wilson," which we discussed just a moment ago. Did you do that?

THE DEFENDANT: Yes.

THE COURT: So, you're pleading guilty to these three charges because you are, in fact, guilty of them?

THE DEFENDANT: Yes.¹⁷

¹⁷ A165-66.

A review of the reindictment reveals that the colloquy with regard to the PFDCF charge reflects the court's reading of Count XII, which charged Stallings with PFDCF during the robbery of Tamika Wilson.¹⁸ However, when the Court sentenced Stallings on the PFDCF charge, it used the criminal action number that corresponded to Count VII (IN14011588), which occurred on September 12, 2012.¹⁹ The same criminal action number (IN14011588) appears on the Sentence Order.²⁰

Contrary to Stallings contention, the Superior Court concluded that there was not a serious procedural defect in taking his plea. The order denying Stallings postconviction relief provides:

The defect Stallings points to in this case is not a serious defect that calls into question whether his plea voluntarily was offered with a complete understanding of the nature of the charges and the consequences of his plea. The face of Stallings' plea agreement demonstrates his knowledge that he was pleading to charges relating to both the April 1st and September 12th crimes. Furthermore, the Court in its colloquy specifically recited the elements in each count, including the date of each offense, and Stallings admitted to committing those offenses, including possessing a firearm during the April 1st robbery. The discrepancy between the PFDCF charge listed on the plea agreement and PFDCF charge reviewed by the trial court during the colloquy did not alter the range of sentence Stallings faced and did not implicate Stallings in a course of criminal conduct to which he had not already admitted. *In light of the trial court's clear colloquy and Stallings' plain acknowledgment of guilt, the fact that the plea agreement and sentencing order listed a different criminal*

¹⁸ A130.

¹⁹ A224.

²⁰ A240-41.

*action number for the PFDCF charge is not a serious procedural defect that contradicts the trial court's finding that Stallings' plea was knowing, intelligent, and voluntary.*²¹

The Superior Court's finding was correct.

The PFDCF charge is the only charge at issue. Stallings contends that the PFDCF charge that he agreed to plead guilty to (Count VII) in the plea agreement and the PFDCF charge that the Court read during the colloquy related to two different events, which so greatly confused him that he could not have reasonably known which charge he was pleading guilty to. Stallings' claim is belied by the record. As the transcript of the plea colloquy reflects, Stallings was aware of the nature of the charges to which he was pleading, including the PFDCF charge. The court reviewed with Stallings the specific factual allegation underlying the PFDCF charge and how it related to another crime to which he was pleading guilty. In other words, Stallings was aware that the PFDCF charge to which he pled guilty was attendant to the robbery first degree charge that identified Tamika Wilson as the victim. Indeed, Stallings admitted that he committed the specific PFDCF offense and agreed that he was pleading guilty because he, in fact, committed the specific PFDCF offense.²² The plea agreement reflects that Stallings agreed to plead guilty to a PFDCF charge and he signed the Truth-In-Sentencing Guilty Plea form indicating that he was aware of the penalties for PFDCF and he was satisfied

²¹ *Stallings*, 2018 WL 3655862, at *7 (emphasis added).

²² A166-67.

with his trial counsel's representation.²³ Stallings is bound by the representations he made to the Court during the plea colloquy.²⁴ Moreover, any claimed confusion over the PFDCF charge to which Stallings would be pleading guilty was eliminated by the Superior Court's colloquy and clear recitation of the PFDCF charge.²⁵ The record does not support Stallings' claim that there was a serious defect in the taking of the plea.

²³ A162-64.

²⁴ *Bradley v. State*, 2007 WL 1599991, at *1 (Del. June 5, 2007) (citing *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997)).

²⁵ See *Barnett v. State*, 2007 WL 1314664, at *3 (Del. May 7, 2007) (holding no procedural defect in taking of a guilty plea where the trial court engaged in a thorough colloquy, explaining the charges and consequences of defendant's guilty plea).

II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED STALLINGS MOTION SEEKING POSTCONVICTION RELIEF.

Question Presented

Whether the Superior Court abused its discretion when it denied Stallings motion seeking postconviction relief.

Standard and Scope of Review

This Court reviews the Superior Court’s denial of a motion for postconviction relief based on claims of ineffective assistance of counsel “under an abuse of discretion standard . . . carefully review[ing] the record to determine whether ‘competent evidence supports the court’s findings of fact and whether its conclusions of law are not erroneous.’”²⁶

Merits of the Argument

Stallings claims the Superior Court erred when it did not find that trial counsel were ineffective. He identifies the following four instances in which trial counsel were ineffective: (1) trial counsel’s failure to “ensure a proper plea colloquy was conducted;” (2) trial counsel’s failure to investigate cell phone records; (3) trial counsel’s failure to investigate the authenticity of the 7-11 surveillance video; and (4) trial counsel’s deficient response to the re-indictment.²⁷

²⁶ *Outten v. State*, 720 A.2d 547, 551 (Del. 1998) (quoting *Dawson*, 673 A.2d at 1196).

²⁷ *Op. Brf.* at 20-34.

Stallings also contends the Superior Court failed to consider his claim of “cumulative prejudice” resulting from trial counsel’s ineffective representation.²⁸

Stallings’ claims of ineffective assistance of counsel are without merit.

To prevail on a claim of ineffective assistance of counsel, Stallings must show (1) that trial counsel’s actions fell below an objective standard of reasonableness and (2) that there exists a reasonable probability that, but for trial counsel’s unprofessional errors, the result of the proceeding would have been different.²⁹ In addition, this Court has consistently held that in setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal.³⁰ Here, each of Stallings’ claims fails.

The Guilty Plea

Stallings claims that trial counsel failure to identify the discrepancy between the count number and criminal action numbers noted on the plea agreement with regard to the PFDCF charge and the Court’s colloquy on the PFDCF charge prior to sentencing amounted to ineffective assistance. The Superior Court determined:

²⁸ *Op. Brf.* at 34.

²⁹ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). *Accord Skinner v. State*, 607 A.2d 1170, 1172 (Del. 1992); *Flamer*, 585 A.2d at 753-54; *Riley v. State*, 585 A.2d 719, 726-27 (Del. 1990); *Robinson v. State*, 562 A.2d 1184, 1185 (Del. 1989); *Stevenson v. State*, 469 A.2d 797, 799 (Del. 1983).

³⁰ *E.g.*, *Skinner v. State*, 1994 WL 91138 (Del. Mar. 3, 1994); *Brawley v. State*, 1992 WL 353838 (Del. Oct. 7, 1992); *Wright v. State*, 1992 WL 53416 (Del. Feb. 20, 1992).

[B]ecause the error Stallings identified was not a serious procedural defect, Trial Counsel's failure to identify the error during the plea colloquy or use it as a basis to withdraw Stallings' plea did not fall below the objective standard of reasonableness. Neither the case law nor the record supports the conclusion that the trial court would have permitted withdrawal on the basis of this error. Accordingly, this argument does not support Stallings' contention that Trial Counsel's assistance was ineffective³¹

The Superior Court did not abuse its discretion when it did not find that trial counsel were ineffective in relation to Stallings' guilty plea.

“The fact that [] plea paperwork may have contained a clerical error does not show that trial counsel committed an error that falls below an objective standard of reasonableness.”³² Here, trial counsel were not ineffective for failing to bring a clerical error to the Superior Court's attention prior to sentencing. The record is clear that Stallings was aware of the nature of the charges to which he was pleading and the specific factual allegations underlying each charge. The Superior Court thoroughly reviewed the charges with Stallings prior to accepting his plea. The plea colloquy and the plea agreement reflect that Stallings knowingly and intelligently pled guilty to the PFDCF offense he disputes here. In sum, trial counsel's performance did not fall below objectively reasonable standards for failing to identify or pursue a course of action based on a nonexistent procedural defect.

³¹ *Stallings*, 2018 WL 3655862, at *7.

³² *State v. Torres*, 2015 WL 1055966, at *2 (Del. Super. Mar. 3, 2015).

Stallings is likewise unable to demonstrate prejudice from trial counsel's failure to raise the "procedural defect" issue prior to sentencing. In the guilty plea context, Stallings must establish, through concrete and specific allegations, that had trial counsel identified the clerical error in the count and criminal action numbers on the plea agreement and advised him that the error provided a basis upon which he could withdraw his guilty plea, he would have proceeded to trial.³³ Stallings made no such assertion in the Superior Court or on appeal. Nor does he make concrete allegations of prejudice that are supported in the record. Indeed, Stallings' claim that he "could not have been aware of which charges he was pleading guilty to and the nature of those offenses, when the State, the court and defense counsel lacked uniformity on the issue"³⁴ is squarely contradicted by the plea colloquy.

Because Stallings has failed to satisfy either prong of *Strickland*, his claim of ineffective assistance of counsel as it relates to the entry of his plea fails.

Cell Phone Records and The Alibi Defense

Stallings claims the Superior Court erred when it failed to find that trial counsel were ineffective for failing to investigate and pursue an alibi defense based, in part, on cell phone records. Stallings' claim is without merit and largely

³³ *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

³⁴ *Op. Brf.* at 20.

disregards the overwhelming evidence of his guilt, of which he was aware when he pled guilty.

When the Superior Court considered Stallings's claim regarding trial counsel's failure to investigate the cell phone records and pursue an alibi defense, it determined:

[Stallings'] arguments fail to satisfy the *Strickland* standard for a number of reasons. First, Trial Counsel made a strategic decision not to rely on Stallings' fiancé as an alibi witness. They did so because it appeared Stallings' fiancé would not cooperate with the State and therefore the State would not call her as a witness. If Stallings' fiancé did not testify, the State could not introduce the incriminating statements Stallings made to her on September 12th after the robbery and murder. If, however, Stallings called her as a witness, the State likely would have succeeded in introducing into evidence Stallings' inculpatory statements to his fiancé. Trial Counsel's strategic decisions are entitled to deference, particularly those based on a thorough investigation of law and facts. Failing to defer to such strategic choices imposes the "distorting effects of hindsight" that the *Strickland* standard seeks to avoid. Here, Trial Counsel made a strategic choice with a full understanding of the substantial harm that calling Stallings' fiancé as a witness likely would cause to his case.³⁵

Stallings contention that the cell phone information could have been used to bolster an alibi defense entirely disregards trial counsel's accurate assessment of the evidence. Trial counsel explained the strategic decision to eliminate Stallings' fiancée as a possible alibi witness as follows:

It was believed that Witness 4, Stallings' fiancée, would not have cooperated with the State as so it would have been folly for them to call her to testify. On the other hand, were the defense to call her for

³⁵ *Stallings*, 2018 WL 3655862, at *11.

the marginal benefit of contradicting a co-defendant's testimony, it would have blown up spectacularly on Stallings when the State elicited from the fiancée the very incriminating remarks made by Stallings in the hours following the murder.³⁶

“Whether to call a witness, and how to cross-examine those who are called are tactical decisions.”³⁷ The Superior Court did not abuse its discretion when it found that Stallings failed to meet the first prong of *Strickland*.

Because Stallings must satisfy both prongs of *Strickland*, the Court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies.”³⁸ In any event, Stallings claims that had trial counsel conducted a thorough investigation into the cell phone records of his fiancée and cell tower information, they would have uncovered evidence that would have bolstered Stallings’ alibi defense and undermined the prosecution’s timeline of the case, while providing evidence and witnesses to refute the State’s assertion that Stallings was present and an active participant in the commission of the September 11 and 12, 2012 crimes. Stallings’ claim of prejudice is pure conjecture that fails to account for any of the evidence of which trial counsel were aware and which convincingly demonstrated his guilt. The Superior Court correctly assessed Stallings’ claim of prejudice as follows:

³⁶ A398-99.

³⁷ *Outten v. State*, 720 A.2d 547, 557 (Del. 1998) (citation omitted).

³⁸ *Strickland*, 466 U.S. at 697.

In addition, Stallings also has not made concrete allegations of actual prejudice resulting from Trial Counsel's purported failure to identify phone calls indicating Stallings' shared phone was in his residence around the time of the September 11th and 12th crimes. Whatever marginal value that evidence might have provided does not overcome the overwhelming evidence of Stallings' guilt and therefore does not establish a reasonable probability that, had Trial Counsel identified the evidence relating to these phone calls, Stallings would not have pleaded guilty and instead would have taken the case to trial. Apart from Stallings' co-defendants' statements, that overwhelming evidence included the video surveillance, the mask and gun recovered in Stallings' residence, and the DNA evidence found on the mask. Accordingly, Stallings cannot meet either prong of *Strickland* with respect to the cell phone records.³⁹

To demonstrate prejudice, “[a] defendant challenging such decisions has the burden of supplying precisely what information would have been obtained had [counsel] undertaken the desired investigation and how this information would have changed the result.”⁴⁰

Here, Stallings offers theories on how trial counsel might have been able to bolster a weak alibi defense with cell phone records. He has not offered concrete allegations of prejudice. Indeed, trial counsel's affidavit demonstrates the potential damage of pursuing the alibi defense at trial. Stallings generally concludes that trial counsel's failure to further investigate cell phone records deprived him of “the informed advice he needed to intelligently and knowingly decide whether to plead

³⁹ *Stallings*, 2018 WL 3655862, at *11.

⁴⁰ *Outten*, 720 A.2d at 557 (citations omitted).

guilty or proceed to trial.”⁴¹ He fails to meet the prejudice prong under *Strickland* because he has not alleged or demonstrated that he would have indeed rejected the plea offer made by the State and insisted on going to trial.⁴² As such, his claim of ineffective assistance fails.

The 7-11 Surveillance Video

Stallings next claims that the Superior Court erred when it concluded trial counsel’s decision to end their investigation into the authenticity of the 7-11 surveillance tape was objectively reasonable. On appeal, he contends trial counsel should have challenged the authenticity of the surveillance video because “defense counsel had a legitimate argument that the video was inadmissible. . . .”⁴³ This claim is without merit.

Under D.R.E. 901(a), “[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”⁴⁴ “The authentication requirement is a ‘lenient burden.’”⁴⁵ That burden is “easily met”⁴⁶

⁴¹ *Op. Brf.* at 28.

⁴² *Somerville*, 703 A.2d at 631.

⁴³ *Op. Brf.* at 31.

⁴⁴ D.R.E. 901(a).

⁴⁵ *Guy v. State*, 913 A.2d 558, 564 (Del. 2006)(quoting *Whitfield v. State*, 524 A.2d 13, 16 (Del. 1987)).

⁴⁶ *Cabrera v. State*, 840 A.2d 1256, 1264-65 (Del. 2004) (citing *Whitfield*, 524 A.2d at 16).

“when there is evidence sufficient to support a finding by a reasonable juror that the proffered evidence is what its proponent claims it to be.”⁴⁷

Here, any challenge to the authenticity of the surveillance video would not have been successful. The email communication between trial counsel’s investigator and the expert demonstrate that, after a preliminary review of the surveillance tape, the expert could only say that some of the skewed frames (where the head and body of the subject depicted do not line up) could have been the result of “incorrect video handling,” and “it is not proof of willful intent and there is no means to determine who did this, how it was done or what video frames (if any) are missing.”⁴⁸ That opinion hardly forms the basis for a successful challenge to the authenticity of the surveillance tape under Rule 901, much less a basis to claim that it contained exculpatory information. Indeed, Stallings is unable to demonstrate what exactly the expert would have opined, what exculpatory evidence would have been discovered by a review of the original surveillance tape or how the results of an expert report would have changed his mind about entering a guilty plea.

Here, the Superior Court did not abuse its discretion by denying Stallings’ claim when it found that trial counsel’s actions were professionally reasonable and

⁴⁷*Parker v. State*, 85 A.3d 682, 688 (Del. 2014) (citations omitted).

⁴⁸ A150.

determined that “[b]road-brush speculation is not sufficient to establish prejudice, particularly given the other overwhelming evidence of Stallings’ guilt.”⁴⁹

In short, Stallings cannot demonstrate that trial counsel’s decision not to use a video expert to challenge the authenticity of the 7-Eleven video footage fell below reasonable professional standards. Moreover, Stallings has failed to demonstrate prejudice. Consequently, his claim of ineffective assistance of counsel with regard to the 7-11 surveillance video fails.

The Reindictment

Stallings claims the Superior Court erred when it determined that trial counsel’s choice to pursue a motion to sever newly indicted charges rather than a motion to dismiss was professionally reasonable and did not result in any prejudice. Stallings advances no legal argument in support of this claim. Rather, he challenges the Superior Court’s reading of the record. When considering Stallings claim in postconviction, the court found the following:

Trial Counsel’s decision to move to sever the charges, rather than move to dismiss under Rule 48, objectively was reasonable because the motion to sever had a higher likelihood of success. Moreover, Stallings has not demonstrated prejudice, because it does not appear Trial Counsel would have achieved a different result with a motion to dismiss. Accordingly, Trial Counsel’s representation was not ineffective.⁵⁰

⁴⁹ *Stallings*, 2018 WL 3655862, at *12.

⁵⁰ *Id.* at *13.

The Superior Court did not abuse its discretion when it made its determination.

“When determining whether a defendant has been deprived of his right to a speedy trial, courts assess the following four factors: ‘(1) the length of delay, (2) the reason for the delay, (3) the defendant’s assertion of the right to a speedy trial, and (4) prejudice to the defendant.’”⁵¹ Here, there was no delay in the original indictment. Stallings was arrested on September 13, 2012, and indicted on December 3, 2012, on charges from his September 2012 crimes.⁵² After his co-defendants, Carson and Palmer, pled guilty and provided proffers regarding Stallings’ involvement in the April 2012 robbery, the State reindicted Stallings on January 21, 2014, to include charges from the April 2012 robbery.⁵³ “There is no precise time period which uniformly triggers a speedy trial analysis.”⁵⁴ This Court has held that “[a] longer period of delay can be tolerated for serious, complex charges, such as murder in the first degree and multiple conspiracies.”⁵⁵ In this case, the reindictment was the result of the continuing investigation into the September incidents (including first degree murder) that led to a broader and more complex conspiracy and pattern of criminal activity (including the April robbery) in which Stallings’ codefendants implicated him.

⁵¹ *Middlebrook v. State*, 802 A.2d 268, 273 (Del. 2002) (citing *Barker v. Wingo*, 407 U.S. 514, 533 (1972); *Key v. State*, 463 A.2d 633, 636 (Del. 1983)).

⁵² A2.

⁵³ A7.

⁵⁴ *Skinner v. State*, 575 A.2d 1108, 1116 (Del. 1990).

⁵⁵ *Id.*

The addition of charges in the reindictment did not impair Stallings' defense, lengthen his pre-trial incarceration, or cause additional anxiety and concern. Stallings had already been charged with capital murder prior to his reindictment. He has failed to allege or demonstrate that he would have prevailed on a motion to dismiss.

Trial counsel filed a motion to sever the April charges from the September charges, where Stallings claimed he would be unfairly prejudiced by the jury hearing about both the April and September charges.⁵⁶ The Superior Court denied the motion finding that "if the April robbery charges were tried separately from the September charges, both juries would nevertheless hear about almost everything relating to all the charges."⁵⁷ While the court acknowledged the risk of unfair prejudice, it found the risk to be "more theoretical, and . . . outweighed by the real benefit of having the jury hear about everything so that it can consider the alleged crimes as related events."⁵⁸ The Superior Court's denial of the motion to sever reinforces Stallings' inability to demonstrate prejudice. Under the theory of prejudice Stallings argued in postconviction, dismissal or severance of the April charges would have achieved the same goal - to relieve the pressure of having a jury consider the April charges and September charges together. But the jury was

⁵⁶ A8.

⁵⁷ *State v. Stallings*, 2014 WL 3047800, at *2 (Del. Super. May 8, 2014).

⁵⁸ *Id.*

going to hear evidence about both the September and April charges whether they had been severed or dismissed. As a result, Stallings cannot demonstrate that trial counsel's failure to file a motion to dismiss based on speedy trial grounds, which would not have been granted, fell below objective standards of reasonableness or that trial counsel's actions resulted in actual prejudice.

Cumulative Prejudice

Stallings argues that the Superior Court "failed to assess the cumulative impact of defense counsels' [sic] deficient performance on Mr. Stallings' decision to plead guilty." This claim is without merit. The Superior Court considered each of Stallings' claims and, in each instance, determined that he failed to demonstrate that trial counsel's representation was constitutionally ineffective under *Strickland*. Because the court did not find that trial counsel were ineffective, Stallings claim of cumulative prejudice fails.

III. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED STALLINGS' CLAIMS REGARDING SELF-REPRESENTATION.

Question Presented

Whether the Superior Court abused its discretion when it denied Stallings' claims regarding self-representation in his postconviction motion.

Standard and Scope of Review

This Court reviews the Superior Court's decision on a motion for postconviction relief, including factual determinations, for abuse of discretion.⁵⁹ Questions of law and constitutional claims are reviewed *de novo*.⁶⁰

Merits of the Argument

Stallings claims that the Superior Court erred when it determined: (1) his claim regarding self-representation was procedurally barred by Rule 61(i)(3); (2) Stallings withdrew his request to represent himself; and (3) trial counsel were not constitutionally ineffective. His contentions are without merit.

After Stallings pled guilty on June 20, 2014, he filed a *pro se* Motion to Withdraw Guilty plea.⁶¹ Trial counsel had also filed a motion to withdraw Stallings' guilty plea on August 13, 2014.⁶² In a letter order entered on August 25, 2014, the Court denied the Motion to Withdraw Guilty Plea without prejudice,

⁵⁹ *Wright v. State*, 91 A.3d 972, 982 (Del. 2014).

⁶⁰ *Id.*

⁶¹ A177-80.

⁶² A171.

permitting trial counsel to request transcripts of the plea colloquy and granting leave for trial counsel to renew the motion.⁶³ As to Stallings' *pro se* submissions, the Court noted that Superior Court Criminal Rule 47 "frowns on the court's addressing *pro se* filings from represented defendants."⁶⁴ The Court then stated the following in its order:

[W]ithin two weeks of receiving the transcript, [trial counsel may] renew[] the motion with specific claims and the factual basis for them. Defendant may then make another filing to his liking, if he insists. If he expects to get traction, however, he will need to address the factual failing in the motion denied here.

The court will not hear reargument now by Mr. Stallings on this letter/order, and the Prothonotary **SHALL** reject any reply by him to this order. Ultimately, the court will accept one more filing by counsel and one by defendant, as permitted above.⁶⁵

Stallings' subsequently filed several motions including a Motion for Substitute Counsel and a Motion to Proceed *Pro Se* on September 2, 2014.⁶⁶ In a letter order addressed to Stallings, the Court ordered the Prothonotary to strike the September 2, 2014 pleadings because they were "out of order" and did not comport with the Court's August 26, 2014 order.⁶⁷

⁶³ A185-88.

⁶⁴ A185.

⁶⁵ A188.

⁶⁶ A12; A183-84; A189-90.

⁶⁷ A191-92.

Stallings' Claim is Procedurally Barred by Rule 61(i)(3)

Rule 61(i) (3) bars Stallings' claim that he was denied his right to self-representation, because the claim was not raised on appeal from his judgment of conviction. The Superior Court did not abuse its discretion when it determined Stallings did not establish cause for his procedural default of the claim because, as the court found and, as demonstrated below, trial counsel were not constitutionally ineffective.

Stallings Was Not Denied His Right to Self-representation

The Sixth and Fourteenth Amendments guarantee that a criminal defendant brought to trial in a state court has the right to assistance of counsel.⁶⁸ The Sixth Amendment is unique, however, because it not only guarantees a substantive right - the right to counsel - it also guarantees the converse right to proceed without counsel at trial.⁶⁹ A criminal defendant also "has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so."⁷⁰ The Sixth Amendment thus embodies two competing rights, because exercising the right to self-representation necessarily means waiving the right to counsel.⁷¹ Proceeding to trial represented by counsel as guaranteed under the Sixth Amendment means that

⁶⁸ See *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Morrison v. State*, 135 A.3d 69, 70, (Del. 2016).

1 & n.5.

⁶⁹ See *Faretta v. California*, 422 U.S. 806 (1975).

⁷⁰ *Id.* at 807.

⁷¹ *Buhl v. Cooksey*, 233 F.3d 783, 789 (3d Cir. 2000).

a defendant has not articulated a desire to waive that right and exercise his/her right to proceed *pro se*. An accused has the right to represent him or herself at trial if the choice is made knowingly, intelligently, and voluntarily.⁷² Courts are required “to scrupulously honor an unequivocal request to proceed *pro se*.”⁷³

To trigger a Sixth Amendment right to represent oneself in criminal proceedings, two conditions must be satisfied. First, the accused must “knowingly and intelligently” waive the right to counsel after having been apprised of “the dangers and disadvantages of self-representation.”⁷⁴ Second, a defendant’s request for self-representation must be made clearly and unequivocally.⁷⁵ The right to self-representation is waived if it is not timely and unequivocally asserted.⁷⁶ Further, the government’s interest in ensuring the integrity and efficiency of the trial may outweigh the defendant’s interest in acting as his own lawyer.⁷⁷ Therefore, although a defendant has the right to represent himself in criminal proceedings,

⁷² *Faretta*, 422 U.S. at 834-35; *Johnson v. Zerbst*, 304 U.S. 458, 464-65 (1938); *Thomas v. Carroll*, 424 F. Supp. 2d 738, 744 (D. Del. 2006); *Snowden v. State*, 672 A.2d 1017, 1020 (Del. 1996).

⁷³ *Stigars v. State*, 674 A.2d 477, 479 (Del. 1996).

⁷⁴ *Faretta*, 422 U.S. at 835.

⁷⁵ *Raulerson v. Wainwright*, 469 U.S. 966, 969-70 (1984); *United States v. Martin*, 25 F.3d 293, 295 (6th Cir. 1995).

⁷⁶ *Jackson v. Ylst*, 921 F.2d 882, 888 (9th Cir. 1990). See *Patterson v. Illinois*, 487 U.S. 285, 307 (1988) (noting the “strong presumption against” waiver of right to counsel). *Raulerson*, 469 U.S. at 969.

⁷⁷ *Martinez v. Court of Appeal of California, Fourth Appellate District*, 528 U.S. 152, 162 (2000).

“the right to self-representation is not absolute.”⁷⁸ Moreover, a defendant can waive his right to self-representation after asserting it.⁷⁹ The right to self-representation may also be waived through conduct that indicates that the defendant is vacillating on the issue or has abandoned his request altogether.⁸⁰ And, consideration of the procedural posture of the case impacts the Sixth Amendment analysis.⁸¹

Here, Stallings argues that the Superior Court’s finding that his request to proceed *pro se* was made clearly and unequivocally “is unsupported by the record and case law.”⁸² He is wrong. The “clear and unequivocal request” requirement can only be satisfied “when the defendant expresses his request in such a manner

⁷⁸ *Id.* at 161.

⁷⁹ See *Buhl*, 233 F.3d at 800 (citing *Wilson v. Walker*, 204 F.3d 33, 38 (2d Cir. 2000) (holding that petitioner abandoned initial request where he subsequently had two different lawyers appointed and did not re-assert right to self-representation)). See also *State v. Spencer*, 519 N.W.2d 357, 360-61 (Iowa 1994) (defendant who moved to represent himself but did not object to new attorney appointed to replace first counsel abandoned right to self-representation in favor of right to counsel); *Brown v. Wainwright*, 665 F.2d 607, 609-12 (5th Cir. 1982) (affirming denial of habeas relief and finding waiver of right to self-representation by defendant who moved to represent himself, was denied the chance to do so, and was later represented at trial by same counsel after attorney represented to the trial court that he and his client had resolved their differences).

⁸⁰ *Wilson*, 204 F.3d at 37.

⁸¹ The United States Supreme Court “take[s] a more pragmatic approach—asking what purposes a lawyer can serve at the particular stage of the proceedings in question, and what assistance he could provide to an accused at that stage—to determine the scope of the Sixth Amendment right to counsel, and the type of warnings and procedures that should be required before a waiver of that right will be recognized.” *Patterson*, 487 U.S. at 298.

⁸² *Op. Brf.* at 42

that ‘no reasonable person could say the request was not made.’”⁸³ Accompanying Stallings’ post-plea motion to proceed *pro se* was a motion for substitute counsel to be appointed. At best, Stallings’ motions demonstrate that he was dissatisfied with trial counsel. Considering both requests, it appears that Stallings was requesting a form of hybrid representation. Indeed, he simultaneously requested that he proceed *pro se* and asked the Superior Court to appoint substitute counsel. Stallings’ filings are not the kind of clear and unequivocal assertion of a defendant’s right to self-representation required to trigger a *Farretta* hearing, much less trigger the right itself. Moreover, Stallings did not make a second request to proceed *pro se*. Rather, he proceeded to sentencing with trial counsel and did not renew a request to proceed *pro se* when trial counsel represented him on direct appeal. His acquiescence to trial counsel’s representation at sentencing and on appeal demonstrates that he abandoned his request, thus waiving the right to self-representation.⁸⁴

The right to self-representation is not absolute, and Stallings did not make a clear and unambiguous request to proceed *pro se* in light of his simultaneous request to have substitute counsel appointed. The Sixth Amendment does not

⁸³ *Merritt v. State*, 2011 WL 285097, at *3 (Del. Jan. 27, 2011) (quoting *Dorman v. Wainwright*, 798 F.2d 1358, 1366 (11th Cir. 1986)).

⁸⁴ “Waiver may be established by a defendant’s failure to reassert the request, if it would not be futile to do so.” *Walker v. State*, 2007 WL 481957, at *2 (Del. Feb. 15, 2007).

guarantee “the right to assert both the right to self-representation and the right to counsel at the same time—*i.e.*, there is no statutory or constitutional right to ‘hybrid representation.’”⁸⁵ And, contrary to Stallings’ assertion, the Superior Court did not “impose[] hybrid representation by forcing him to proceed *pro se* on the motion to withdraw the guilty plea.”⁸⁶ The record supports the conclusion that Stallings waived his right to self-representation by acquiescing to trial counsel’s continued representation.

Trial Counsel Were Not Ineffective

Stallings also broadly claims trial counsel were ineffective for “neglecting to protect [his] Sixth Amendment right to waive counsel.”⁸⁷ This claim is without merit.

After pleading guilty and representing to the Superior Court that he was satisfied with trial counsel’s representation, Stallings, filed a *pro se* motion to withdraw his guilty plea. Trial counsel also filed a motion to have Stallings’ guilty plea withdrawn. As Stallings continued to make *pro se* filings while represented by trial counsel, the court issued a letter order on August 26, 2014, and set forth a schedule for filings on the motion to withdraw. The court limited the filings trial counsel and Stallings could file, and cautioned Stallings against continuing to

⁸⁵ *United States v. Cottrell*, 2006 WL 278562, at *1 (W.D. Tenn. Feb. 2, 2006). (citations omitted).

⁸⁶ *Op. Brf.* at 40.

⁸⁷ *Op. Brf.* at 41.

make *pro se* filings. When Stallings made several filings on September 2, 2014, which did not comport with the court's order, including the Motion to Proceed *Pro Se* and the Motion for Substitute Counsel, the court ordered the Prothonotary to strike the filings.

Stallings' simultaneous requests to proceed *pro se* and for the appointment of substitute counsel were not a clear and unequivocal assertion of his right to self-representation. Stallings did not renew either request, and he proceeded to sentencing and direct appeal with trial counsel's representation. Because Stallings' requests were not unambiguous, trial counsel were under no obligation to take steps to protect a right that Stallings had not clearly and unequivocally invoked.

The Superior Court correctly determined:

Although Stallings is correct that a trial court's failure to hold a hearing on a defendant's plain request to proceed *pro se* constitutes legal error, and trial counsel's failure to take steps in response to a clear and unequivocal invocation could well constitute ineffective assistance of counsel, in this case Stallings made one request to proceed *pro se*, which he promptly abandoned and waived by reiterating numerous times to the Court that he was *not* waiving his right to counsel and wished to have substitute counsel appointed.⁸⁸

Here, Stallings cannot meet his high burden of showing that trial counsel's representation fell outside of the "wide range of reasonable professional assistance."⁸⁹ Stallings has failed to establish deficient performance by trial

⁸⁸ *Stallings*, 2018 WL 3655862, at *8.

⁸⁹ *Strickland*, 466 U.S. at 689.

counsel. Thus, he cannot satisfy the first prong of *Strickland*. The Superior Court did not abuse its discretion when it denied Stallings' claim of ineffective assistance of counsel.

IV. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT DETERMINED APPELLATE COUNSEL WERE NOT INEFFECTIVE.

Question Presented

Whether the Superior Court abused its discretion when it determined appellate counsel were not ineffective.

Standard and Scope of Review

This Court reviews a trial court's denial of a motion for postconviction relief for abuse of discretion.⁹⁰

Merits of the Argument

While the *Strickland* test was developed to evaluate trial counsel, it is also applied to evaluate appellate counsel's performance. "Although a defendant is entitled to effective assistance of counsel during an appeal, this does not mean that his attorney must raise every nonfrivolous issue. A defendant can only show that his appellate counsel ineffectively represented him where the attorney omits issues that are clearly stronger than those the attorney presented."⁹¹ And, to demonstrate prejudice in the appellate context, Stallings is required to show that "but for his

⁹⁰ *Redden v. State*, 150 A.3d 768, 772 (Del. 2016).

⁹¹ *Ploof v. State*, 75 A.3d 811, 831–32 (Del. 2013).

counsel's unreasonable failure to file a merits brief, he would have prevailed on his appeal."⁹²

Stallings claims that the Superior Court erred when it denied his claims alleging ineffective assistance of appellate counsel. He contends that appellate counsel should not have filed a non-merits brief because there were "nonfrivolous appellate issues to be raised."⁹³ Stallings identifies the nonfrivolous issues as "a serious procedural defect in the plea process" and his "clear and unequivocal request to self-represent."⁹⁴

Stallings' Guilty Plea

"[I]f there is a serious procedural defect in the plea process or if it clearly appears that the defendant did not knowingly or voluntarily consent to the plea agreement, a sufficient basis exists for withdrawal of the plea"⁹⁵ A clerical error on plea paperwork does not constitute a serious procedural defect that would provide a basis for an argument *on appeal* that the court erred when it accepted his plea, or abused its discretion when it denied a motion to withdraw the plea on that basis.⁹⁶ Stallings' claims regarding a procedural defect in the plea

⁹² *Neal v. State*, 80 A.3d 935, 947 (Del. 2013) (quoting *Smith v. Robbins*, 528 U.S. 259, 285 (2000) (internal quotes omitted)).

⁹³ *Op. Brf.* at 45.

⁹⁴ *Op. Brf.* at 45.

⁹⁵ *Patterson v. State*, 684 A.2d 1234, 1239 (Del. 1996).

⁹⁶ *Torres*, 2015 WL 1055966, at *2.

process would not have prevailed on appeal and therefore appellate counsel cannot be faulted for failing to raise the issue.

Self-representation

While this Court has held that “the right of self-representation in a criminal proceeding is structural,” Stallings would have been unable to demonstrate on appeal that his right to self-representation was violated.⁹⁷ As noted above, a defendant’s request for self-representation must be made clearly and unequivocally.⁹⁸ Stallings’ request did not satisfy this requirement. Although they are separate documents, Stallings’ simultaneous filings requested self-representation *and* the appointment of substitute counsel. The Superior Court was not required to conduct a *Faretta* hearing because Stallings’ request was not clear and unambiguous. Appellate counsel were not professionally obligated to raise an issue on appeal that would have failed on its merits. The decision to file a non-merits brief was objectively reasonable and Stallings cannot demonstrate prejudice. As a result, his claim of ineffective assistance of appellate counsel fails.

⁹⁷ *Williams v. State*, 56 A.3d 1053, 1056 (Del. 2012).

⁹⁸ *Raulerson*, 469 U.S. at 969-70; *Martin*, 25 F.3d at 295.

CONCLUSION

For the foregoing reasons the judgment of the Superior Court should be affirmed.

/s/ Andrew J. Vella
ANDREW J. VELLA (ID No. 3549)
Deputy Attorney General
Department of Justice
Carvel State Office Building
820 N. French Street, 7th Floor
Wilmington, DE 19801
(302) 577-8500

DATE: December 26, 2018

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VINCENT STALLINGS,)
)
 Defendant – Below,)
 Appellant,)
)
 v.) **No. 449, 2018**
)
 STATE OF DELAWARE,)
)
 Plaintiff – Below,)
 Appellee.)

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT
AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using MS Word.

2. This brief complies with the type-volume requirement of Rule 14(d)(i) because it contains 8,954 words, which were counted by MS Word.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Andrew J. Vella
Deputy Attorney General
ID No. 3549

DATE: December 26, 2018