EFiled: Jan 18 2023 01:30PM EST
Filing ID 68918822
Case Number 6,2022

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RODERICK OWENS,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 6, 2022
	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

Brian L. Arban (Bar I.D. No. 4511)
Deputy Attorney General
Delaware Department of Justice
Carvel Office Building
820 N. French Street, 5th Floor
Wilmington, DE 19801
(302) 577-8500

Dated: January 18, 2023

TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS

STATUTES AND RULES

OTHER AUTHORITIES

NATURE AND STAGE OF THE PROCEEDINGS

In February 2014, a Superior Court grand jury indicted Roderick Owens on charges of possession of a firearm by a person prohibited ("PFBPP"), possession of ammunition by a person prohibited ("PABPP"), carrying a concealed deadly weapon ("CCDW"), and misdemeanor resisting arrest.[1] Because Owens had been previously convicted of three felonies, including a violent one, he faced a minimum mandatory sentence for PFBPP of 15 years to life as a habitual offender.[2] At Owens's first case review on April 7, 2014, the State extended a plea offer in which it would seek to have him sentenced as a habitual offender to 15 years of Level V imprisonment for PFBPP.[3]

In April 2014, Owens moved to suppress the evidence in his case and to sever certain charges.[4] The Superior Court severed the person prohibited charges into a

---

[1] B1 at D.I. 1.

[2] *See* A26-27; 11 *Del. C.* §§ 1448(c), (e)(1) (2013) (PFBPP is a Class C felony if "the person is eligible for sentencing pursuant to subsection (e)" and a prior violent felony conviction qualifies as a sentence enhancement); 11 *Del. C.* § 4214(a) (2013) (a person convicted of a fourth felony, if a violent one, is subject to a minimum sentence not "less than the statutory maximum penalty" and a maximum penalty of life imprisonment without the possibility of probation or parole). As will be further discussed, Owens faced a potential minimum mandatory Level V sentence of 23 years as a habitual offender on all of his felony charges.

[3] A770.

[4] A1 at D.I. 2; B2 at D.I. 9, 10.

separate "B" case.[5] On August 18, 2014, the State responded to Owens's suppression motion, and the Superior Court held a hearing on the motion on the same day.[6] The Superior Court took the motion under advisement.[7] Before the suppression hearing, the State extended a more favorable plea offer to Owens's trial counsel in which it would recommend a Level V sentence of 10 years as a non-habitual offender for PFBPP.[8] At Owens's final case review on September 2, 2014, counsel indicated to the Superior Court that Owens was unwilling to accept the State's revised plea offer, and the matter was set for trial.[9]

On September 9, 2014, the court denied Owens's suppression motion.[10] His "B" case proceeded to a jury trial in the Superior Court on September 16, 2014, and the jury convicted him of PFBPP and PABPP after a two-day trial.[11] Owens stipulated at trial that he "was not legally permitted to possess either a firearm or

---

[5] A1 at D.I. 3.

[6] B3 at D.I. 18, 19.

[7] B3 at D.I. 18.

[8] A720-21. The Superior Court noted that one of the two predicate offenses for sentence enhancement of Owens's PFBPP charge was no longer a violent felony, which means that Owens did not qualify for enhancement under §1448 (e)(1)(c). *See State v. Owens*, 2021 WL 6058520, at *2 n.4 (Del. Super Dec. 21, 2021).

[9] A720.

[10] A691-716.

[11] A2 at D.I. 10.

ammunition."[12] On November 26, 2014, the State moved to have him declared to be a habitual offender and for the court to sentence him accordingly for PFBPP.[13] On December 19, 2014, the Superior Court granted the State's motion and declared Owens to be a habitual offender under 11 *Del. C.* § 4214(a).[14] The court then sentenced him as follows: (i) for PFBPP, as a habitual offender, to 15 years of Level V imprisonment; and (ii) for PABPP, as a non-habitual offender, to eight years of Level V incarceration, suspended after four years for decreasing levels of supervision.[15] The State subsequently entered a *nolle prosequi* on the charges in his "A" case.[16] This Court affirmed Owens's convictions.[17]

On February 27, 2017, Owens filed a *pro se* motion for postconviction relief under Superior Court Criminal Rule 61, along with a motion to appoint counsel.[18] On March 7, 2017, the Superior Court appointed counsel to assist him in postconviction.[19] On March 16, 2020, Owens's appointed counsel filed an amended

[12] A2 at D.I. 8.

[13] A2 at D.I. 12.

[14] A2 at D.I. 13.

[15] A756-66.

[16] B5 at D.I. 28.

[17] *Owens v. State*, 2016 WL 859351, at *1 (Del. Mar. 4, 2016).

[18] A7-8 at D.I. 53, 54.

[19] A8 at D.I. 56.

Rule 61 motion.[20] Owens's trial counsel filed affidavits addressing his ineffective-assistance-of-counsel claims, the State responded to his motion, and Owens replied.[21] On December 21, 2021, the Superior Court denied his Rule 61 motion.[22]

Owens timely filed a Notice of Appeal, but counsel thereafter moved to withdraw his representation of Owens and to remand the matter for an evidentiary hearing so he could proceed *pro se*.[23] On July 13, 2022, this Court remanded this case to the Superior Court to conduct an evidentiary hearing.[24] Then, on August 5, 2022, this Court permitted new counsel for Owens to enter his appearance.[25] Owens then filed a counseled opening brief on December 16, 2022, which he subsequently corrected.[26] This is the State's answering brief.

---

[20] A15 at D.I. 101.

[21] A16 at D.I. 83, 85, 90, 111; A262-85; A727-53.

[22] *Owens*, 2021 WL 6058520, at *1.

[23] D.I. 7, 20.

[24] D.I. 26.

[25] D.I. 31.

[26] D.I. 40, 42.

SUMMARY OF THE ARGUMENT

I. Denied. The Superior Court did not abuse its discretion. Owens's trial counsel did not perform deficiently. Competent evidence supports the Superior Court's determination that counsel had conveyed the State's plea offers to Owens. Nor has Owens demonstrated that any error of trial counsel prejudiced him. Owens is incorrect that prejudice should be presumed. His assertion that he would have pleaded guilty is insufficient to demonstrate prejudice. Finally, the Superior Court appropriately exercised its broad discretion by denying his request for an evidentiary hearing, and this Court should decline his request to remand this matter for one.

II. Denied. The Superior Court did not abuse its discretion. Owens has not established that his trial counsel performed deficiently by not securing his appearance at final case review. The case review was not a critical stage in his criminal proceeding, and he did not have a fundamental right to be present. Owens also has not shown prejudice. Trial counsel discussed the State's plea offers with him, there was no waiver of his defenses or privileges at trial, and his presence would not have enhanced counsel's update to the court at the case review.

III. Denied. The Superior Court did not abuse its discretion. The "cumulative error doctrine" does not apply as there were no errors to accumulate and no actual prejudice to Owens.

IV. Denied. The Superior Court did not abuse its discretion. Trial counsel's decision to not present certain evidence at the suppression hearing was objectively reasonable. Even if Owens's evidence would have shown that the house was not vacant, the property owner had not called the police, and the property did not have a "No Loitering" sign, the police had reasonable articulable suspicion to investigate him for criminal activity based on his presence in a high-crime area, unprovoked flight, and furtive movements. In any event, Owens has not demonstrated prejudice or a reasonable probability that the outcome of his proceeding would have been different.

STATEMENT OF THE FACTS[27]

On December 5, 2013, Owens was seated on the steps of a boarded-up house emblazoned with a "No Loitering" sign. Some days before, the property owner, who was not living in the house, reported vagrant activity on the property. Two officers who knew about the reports and were investigating recent shootings in the neighborhood saw Owens as they drove by.

As the police car approached, Owens bladed his stance. He adjusted his waistband and grasped a rectangular object at his hip. He was staring in the officers' eyes as they parked. Then, he ran. He sprinted for blocks and through an alley as the original officers and additional reinforcements pursued him on foot and ordered him to stop. He kept running and ignoring the police until a taser ended the race.

With the police in hot pursuit, Owens tossed a loaded handgun onto the sidewalk. Owens is a convicted felon, making his possession of a handgun illegal.

[27] These facts are substantially adopted from *Owens*, 2021 WL 6058520, at *1.

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY DENYING OWENS POSTCONVICTION RELIEF ON HIS CLAIM THAT HIS TRIAL COUNSEL WAS INEFFECTIVE FOR NOT COMMUNICATING THE STATE'S PLEA OFFERS TO HIM.

Question Presented

Whether the Superior Court abused its discretion by denying Owens postconviction relief on his claim that his trial counsel was ineffective for not communicating the State's plea offers to him.

Standard and Scope of Review

This Court reviews the denial of postconviction relief for an abuse of discretion.[28] It reviews associated legal and constitutional questions *de novo*.[29] "[F]actual determinations will not be disturbed on appeal if they are based upon competent evidence and are not clearly erroneous."[30]

Merits of the Argument

In this postconviction appeal, Owens argues that the Superior Court erred by denying his amended Rule 61 motion.[31] He contends that trial counsel's performance was deficient because counsel "never informed him of plea terms offered by the [S]tate that were favorable to him" and that "even if he was aware of

[28] *Cabrera v. State*, 173 A.3d 1012, 1018 (Del. 2017).

[29] *Outten v. State,* 720 A.2d 547, 551 (Del. 1998).

[30] *Burrell v. State*, 953 A.2d 957, 960 (Del. 2008).

[31] Corr. Opening Br. at 20.

the first plea offer made at initial case review (which he was not), he was never told that the State had offered a non-habitual plea offer with a recommendation of only 10-years at Level V to be served."[32] Owens contends that the Superior Court's conclusion that counsel had communicated the State's plea offers to him is not supported by competent evidence.[33] According to Owens, the Superior Court only relied on counsel's affidavit in concluding that he had discussed the State's 15-year plea offer with Owens, and there is an absence of "direct evidence that the [10-year] plea offer was communicated."[34] This lack of evidence includes any assertion by counsel in his affidavit or any indication in his file notes that he had met with Owens at his final case review.[35] Owens asserts that counsel's post-trial email acknowledging his ethical duty to communicate plea offers amounts to him merely "recogniz[ing], after the fact, that the law imposes a duty upon counsel to communicate a plea offer."[36] Owens further alleges that prejudice should be presumed under *United States v. Cronic*,[37] but, in any case, he suffered prejudice

[32] *Id.* at 20. Owens's opening brief seems inconsistent on this point because he indicates elsewhere that trial counsel had communicated the 15-year plea offer to him. *See id.* at 33.

[33] *See id.* at 22-23.

[34] *Id.* at 22.

[35] *Id.* at 23.

[36] *Id.* at 23.

[37] 466 U.S. 648 (1984).

under *Missouri v. Frye*.[38] He contends that he would have accepted the State's 10-year plea offer, and he received "a sentence nearly double that recommended by the second plea offer."[39] In the event this Court would analyze prejudice under *Strickland* instead of *Cronic*, Owens asks this Court to remand for an evidentiary hearing.[40]

Owens raised similar arguments in his amended Rule 61 motion.[41] The Superior Court found that "his allegations are not supported by the record, which demonstrates that Trial Counsel performed reasonably under difficult circumstances."[42] The court concluded that trial counsel had communicated the State's plea offers to Owens.[43] The court also denied Owens's request for an evidentiary hearing because his "proffered presentation is unsubstantiated and, if entertained, would defeat the purpose of an evidentiary hearing."[44] The court determined that a hearing would involve Owens simply "repeat[ing] his allegations in a courtroom," and he "has not marshaled reliable documents or a credible witness

[38] 566 U.S. 134 (2012); Corr. Opening Br. at 25-26.

[39] Corr. Opening Br. at 21, 26.

[40] *Id.* at 28.

[41] *See Owens*, 2021 WL 6058520, at *5.

[42] *Id.* at *1.

[43] *Id.* at *9.

[44] *Id.* at *15.

or identified another sufficient factual or legal basis for impugning Trial Counsel's testimony."[45] The Superior Court did not abuse its discretion by denying Owens postconviction relief or his request for an evidentiary hearing.

A. Owens's ineffective-assistance-of-counsel claim is not procedurally barred under Rule 61.

In any motion for postconviction relief, the Court addresses the procedural bars under Rule 61(i) before turning to the merits.[46] Rule 61(i)(1) prohibits the Court from considering a motion for postconviction relief unless it is filed within the one-year time limitation.[47] Rule 61(i)(2) provides that any second or subsequent postconviction motion will be summarily dismissed unless, under Rule 61(d)(2)(i), the movant "pleads with particularity that new evidence exists that creates a strong inference" of actual innocence; or, under Rule 61(d)(2)(ii), "that a new rule of constitutional law, made retroactive to cases on collateral review" applies to movant's case.[48] Rule 61(i)(3) bars claims not "asserted in the proceedings leading to the judgment of conviction" unless the movant demonstrates cause and

---

[45] *Id*. (cleaned up).

[46] *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996). Because Owens properly filed his motion for postconviction relief in February 2017, it is controlled by the version of Superior Court Criminal Rule 61 which was in effect at that time. *Redden v. State*, 150 A.3d 768, 772 (Del. 2016).

[47] Super. Ct. Crim. R. 61(i)(1).

[48] Super. Ct. Crim. R. 61(i)(2).

prejudice,[49] while Rule 61(i)(4) bars formerly adjudicated claims.[50] Rule 61(i)(5) provides that any claim barred by Rule 61(i)(1) through (i)(4) may nonetheless be considered if the claim is jurisdictional or otherwise satisfies the pleading requirements of Rule 61(d)(2)(i) or (d)(2)(ii).[51]

Here, Owens's convictions became final when this Court issued its mandate at the conclusion of his direct appeal on March 17, 2016.[52] Thereafter, Owens filed his *pro se* Rule 61 motion on February 27, 2017.[53] The Superior Court properly determined that his first Rule 61 motion is timely filed and that Rule 61(i)(2) does not apply to the motion.[54] Moreover, the court properly found that his ineffective-assistance-of-counsel claim is not procedurally barred under Rule 61(i)(3) because he could not have raised it during his trial or direct appeal.[55]

---

[49] Super. Ct. Crim. R. 61(i)(3).

[50] Super. Ct. Crim. R. 61(i)(4).

[51] Super. Ct. Crim. R. 61(i)(5).

[52] A6 at D.I. 46; Super. Ct. Crim. R. 61(m)(2); *Staats v. State*, 961 A.2d 514, 516-17 (Del. 2008).

[53] A8 at D.I. 53.

[54] *Owens*, 2021 WL 6058520, at *7.

[55] *Id.* (citing *Green v. State*, 238 A.3d 160, 175 (Del. 2020)).

B. Owens's ineffective-assistance-of-counsel claim is meritless.

1. The Strickland *Standard*

Owens cannot prevail on his ineffective-assistance-of-counsel claim based on his allegation that counsel did not communicate the State's plea offers to him. To succeed on an ineffective-assistance-of-counsel claim, the United States Supreme Court held in *Strickland v. Washington* that a defendant must show both: (1) "that counsel's representation fell below an objective standard of reasonableness;" and (2) "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[56] There is a strong presumption that counsel's legal representation was professionally reasonable.[57] Mere allegations of ineffectiveness will not suffice; instead, a defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.[58] In fairly assessing an attorney's performance under *Strickland*'s two-part test, "every effort [must] be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time."[59] The "prejudice" analysis

---

[56] *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

[57] *Flamer v. State*, 585 A.2d 736, 753-54 (Del. 1990) (citations omitted).

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

[59] *Strickland*, 466 U.S. at 689.

"requires more than a showing of theoretical possibility that the outcome was affected."[60] The defendant must actually show a reasonable probability of a different result but for trial counsel's alleged errors.[61] "It is not enough 'to show that the errors had some conceivable effect on the outcome of the proceeding.'"[62]

> In the context of plea negotiations, prejudice occurs where
>
> > [b]ut for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed.[63]

In other words, "[u]nder *Strickland*, prejudice can be shown if loss of the plea opportunity led to a trial resulting in a conviction on more serious charges or the imposition of a more severe sentence."[64] Although jurisdictions are split on the

---

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

[61] *Strickland*, 466 U.S. at 695.

[62] *Harrington v. Richter*, 562 U.S. 86, 104 (2011) (quoting *Strickland*, 466 U.S. at 693).

[63] *Burns v. State*, 76 A.3d 780, 785 (Del. 2013) (quoting *Lafler v. Cooper*, 566 U.S. 156, 164 (2012)).

[64] *Urquhart v. State*, 203 A.3d 719, 734 (Del. 2019).

issue, courts have held that bald, non-credible assertions that the defendant would have accepted a plea offer are insufficient to demonstrate prejudice.[65]

A defendant asserting ineffective assistance of counsel must typically satisfy *Strickland*'s two-part test.[66] However, *Cronic* identified three circumstances where prejudice is presumed because counsel's deficient performance was "so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified."[67] First is where there "is the complete denial of counsel" at a "critical stage,"[68] which includes pre-trial proceedings.[69] Second is where counsel "fails to subject the prosecution's case to meaningful adversarial testing."[70] Third is where counsel was called upon to render assistance under circumstances where competent counsel very likely could not.[71] *Cronic* applies only in those narrow set of circumstances.[72] There must be a total deprivation of counsel or a "constructive

---

[65] *See e.g.*, *United States v. Giamo*, 153 F. Supp. 3d 744, 763 (E.D. Pa. 2015) (noting that certain jurisdictions require either "objective evidence" or "credible testimony" with a disparity between the sentence offered and ultimately received, but finding defendant's assertion not credible that he would have pled guilty to a 10-year minimum sentence).

[66] *Cooke v. State*, 977 A.2d 803, 848 (Del. 2009).

[67] *Cronic*, 466 U.S. at 658.

[68] *Id.* at 659.

[69] *Deputy v. State*, 500 A.2d 581, 591 n.13 (Del. 1985).

[70] *Cronic*, 466 U.S. at 659.

[71] *Id.* at 659-60.

[72] *Reed v. State*, 258 A.3d 807, 824 (Del. 2021) (citing *Cronic*, 466 U.S. at 658).

denial of counsel," which requires the "complete breakdown, either in the adversarial process or in attorney-client communication."[73]

Should this Court find that trial counsel performed deficiently, this Court should analyze any prejudice under *Strickland*, not *Cronic*. There was neither a total deprivation nor constructive denial of counsel. To be sure, this Court found in *Urquhart* that there were "elements of both a *Cronic* and a *Strickland* violation" where trial counsel had no advance discussions with a defendant about trial strategy or whether to accept a plea offer.[74] Yet, even in the absence of such pretrial preparation, this Court still considered prejudice under *Strickland*.[75] And the facts of this case are different than those in *Urquhart* because trial counsel had multiple pretrial meetings with Owens, and he thoroughly litigated a suppression motion. Unlike the defendant in *Urquhart*, Owens's counsel was present and active. Accordingly, *Strickland* applies.

2. Trial counsel's performance was not deficient.

The Superior Court properly concluded that Owens had not shown deficient performance under *Strickland*. The court concluded that trial counsel had met with Owens to discuss the State's 15-year plea offer and "whether the defense should

[73] *Reed*, 258 A.3d at 825 (cleaned up).

[74] *Urquhart*, 203 A.3d at 732.

[75] *Id.* at 733.

accept it or move to suppress."[76] The court concluded that counsel subsequently filed the suppression motion, which "did induce the prosecutor to trim 5 years off his sentence offer" in exchange for the defense withdrawing the motion.[77] The court determined that "there is no reason to believe Trial Counsel would deliberately withhold from Mr. Owens the fact that the plea offer had gotten sweeter with the filing of the motion but the only way to get the deal was to withdraw the motion."[78] The court found that this "is essentially what Trial Counsel represented to the Court at final case review" and that "[t]here is no obvious reason why Trial Counsel would tell the Court about a 10-year offer in the courtroom but not tell Mr. Owens the same thing downstairs in the lockup."[79] Citing a December 2014 email in which counsel acknowledged his ethical duty to communicate plea offers to Owens, the court found that that "[t]he record supports a finding that Trial Counsel conveyed every offer to [him]."[80]

The Superior Court's determinations are supported by competent evidence. This Court accords deference to the Superior Court's factual determinations.[81] This

---

[76] *Owens*, 2021 WL 6058520, at *9.

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] *Burton v. State*, 2016 WL 3568189, at *1 (Del. June 22, 2016).

is "because the Superior Court has had the opportunity to hear the evidence, evaluate the credibility of the witnesses, and review the transcripts of the prior proceedings."[82] This Court accepts factual findings that are "sufficiently supported by the record and are the product of an orderly and logical deductive process," "even though independently [it] might have reached opposite conclusions."[83] "When the determination of facts turns on a question of credibility and the acceptance or rejection of 'live' testimony by the trial judge, his findings will be approved upon review."[84] In other words, this Court "will not disturb the findings of the Trial Judge, supported as they are, by sufficient evidence, unless they are clearly wrong and the doing of justice requires their overturn."[85]

In this case, trial counsel submitted an affidavit in which he denied Owens's claim that he did not communicate the State's plea offers to him.[86] Counsel averred that he met with Owens on three separate occasions, including during his first case review, and he believed he met with Owens at his final case review.[87] Counsel said he conveyed the State's 15-year plea offer to him, and he denied not communicating

---

[82] *Flamer*, 585 A.2d at 754 (declining to upset Superior Court's factual findings absent an abuse of discretion).

[83] *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

[84] *Id.*

[85] *Harris v. State*, 305 A.2d 318, 319 (Del. 1973) (cleaned up).

[86] A727.

[87] A727-28.

the State's 10-year plea offer to Owens because he "believe[d] he met with Mr. Owens at final case review."[88] Although counsel admitted that he did not have an "independent recollection" about meeting with Owens at his final case review, he "cannot think of a circumstance where [counsel] ha[d] ever not met with a client at a case review where the client was not present."[89] Counsel advised that "[t]here is simply no way that [he] would have failed to convey a plea offer to [his] client" and, as support, cited his December 2014 email to the State regarding Owens's matter in which he expressly acknowledged his ethical obligation to convey the State's plea offers to Owens.[90]

Further, at Owens's final case review, the Superior Court raised the need to have a colloquy with Owens about proceeding to trial, and trial counsel indicated that no colloquy was needed because of a "pending suppression issue where we've had the hearing, but it has not been ruled on yet."[91] When the court inquired about an attempt to resolve the matter under a plea bargain, counsel said that "[r]ight now the last [plea] offer was ten—ten years."[92] Counsel said he had been communicating with the prosecution, but "there's been nothing better than that, which is the offer

---

[88] A729.

[89] *Id.*

[90] *Id.*

[91] A720.

[92] *Id.*

prior to the suppression hearing."[93] The court interpreted counsel's recitation of the case's status as indicating that Owens had rejected the State's latest plea offer, and counsel did not contest the court's understanding.[94]

The record supports the Superior Court's factual determinations, which are not clearly erroneous. As the court noted, this issue involved resolving a credibility battle between Owens and his counsel.[95] The court acted well within its discretion in resolving this dispute in counsel's favor.[96] Based on the timing of the State's plea offers and the suppression motion and hearing, the court could have reasonably concluded that the State had extended the 10-year plea offer in an effort to avoid further litigation on the suppression issue. Owens's claims are insufficient to overcome the strong presumption that counsel acted reasonably.[97]

---

[93] A720-21.

[94] *See* A721.

[95] *Owens*, 2021 WL 6058520, at * 15.

[96] *See Andrews v. Cameron*, 2012 WL 4712033, at *9 (W.D. Pa. Aug. 30, 2012) (in the context of a federal habeas petition, declining to upset trial court's determination that trial counsel had communicated a plea offer to his client "given trial counsel's testimony as to the long-standing practice of himself and the Public Defender's office to communicate all plea offers to a defendant" and that counsel "was adamant that he could not imagine not communicating a plea offer to a client"), *report and recommendation adopted by*, 2012 WL 4742857 (W.D. Pa. Oct. 3, 2012).

[97] *See Hicks v. State*, 2008 WL 3166329, at *4 (Del. Aug. 7, 2008) (conclusory allegation that trial counsel did not inform or misinformed defendant regarding issue in guilty plea "is insufficient to rebut the 'strong presumption' that counsel's conduct was professionally reasonable").

3. Owens has not demonstrated prejudice.

Because Owens has not established deficient performance under *Strickland*, he cannot show resulting prejudice from any error of trial counsel. Although the Superior Court did not appear to reach the issue of prejudice, it inferred from the record that Owens decided on pursuing the suppression motion in the hopes of avoiding imprisonment instead of accepting the State's 10-year plea offer.[98] Owens's after-the-fact assertion that he would have accepted this offer is insufficient to demonstrate prejudice. Although Owens ultimately received a longer sentence by proceeding to trial, the record indicates that he had previously rejected a 15-year plea offer, although he faced a sentence of 23 years to life imprisonment if he was convicted of PFBPP, PABPP, and CCDW and sentenced as a habitual offender on those offenses.[99] Owens has not established that trial counsel performed deficiently, or that he suffered prejudice.

---

[98] *See Owens*, 2021 WL 6058520, at *9-10.

[99] *See* 11 *Del. C.* § 1448(c) (2013) (PFBPP is a Class C felony if the person qualifies for a sentence enhancement under subsection (e), while PABPP is a Class D felony); 11 *Del. C.* § 4214(a) (2013); 11 *Del. C.* § 1442 (CCDW is a Class D felony if weapon is a firearm); 11 *Del. C.* §§ 4205 (b)(3), (4) (a defendant convicted of a Class C or Class D felony may receive a Level V sentence of imprisonment up to 15 and 8 years, respectively).

C. Owens in not entitled to an evidentiary hearing.

Owens contends that the Superior Court should have conducted an evidentiary hearing and alternatively seeks a remand of this matter to the Superior Court for one. The Superior Court did not abuse its discretion by denying his request for an evidentiary hearing, however. "Rule 61(h)(1) grants the Superior Court broad discretion in determining whether an evidentiary hearing on a postconviction motion is necessary."[100] "[I]t is within the Superior Court's discretion to determine, after considering the motion, the State's response, the movant's reply and the record of any prior proceedings, whether an evidentiary hearing is desirable."[101] If the court "determines in its discretion that an evidentiary hearing is unnecessary . . . , then summary disposition of the motion is entirely appropriate."[102]

Here, the Superior Court appropriately exercised its broad discretion in declining Owens's request for an evidentiary hearing. The court reasonably determined that an evidentiary hearing would be futile as the hearing would require it to select "between an *ipse dixit* narrative emerging for the first time in an amended Rule 61 motion and an affidavit supported by a record that contradicts the

---

[100] *George v. State*, 2015 WL 1000228, at *3 (Del. Mar. 6, 2015).

[101] *Marin v. State*, 2004 WL 716774, at *1 (Del. Mar. 25, 2004).

[102] *Maxion*, 686 A.2d at 151.

defendant's claims."[103] The court reasonably concluded that it could resolve Owens's postconviction motion based on the record before it. Accordingly, the Superior Court did not abuse its discretion by denying Owens postconviction relief or an evidentiary hearing.

[103] *Owens*, 2021 WL 6058520, at *15.

II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY DENYING OWENS POSTCONVICTION RELIEF ON HIS CLAIM THAT HIS TRIAL COUNSEL WAS INEFFECTIVE FOR NOT SECURING OWENS'S APPERANCE AT FINAL CASE REVIEW.

Question Presented

Whether the Superior Court abused its discretion by denying Owens postconviction relief on his claim that trial counsel was ineffective for not securing his appearance at his final case review.

Standard and Scope of Review

This Court reviews the denial of postconviction relief for an abuse of discretion.[104] Legal and constitutional questions are reviewed *de novo*.[105] This Court will not disturb factual findings that are based on competent evidence and are not clearly erroneous.[106]

Merits of the Argument

Owens argues that Superior Court Criminal Rule 43 provided him with the fundamental right to be present at his final case review because it was a critical stage of the litigation.[107] He claims that the court did not adhere to the procedures under the court's Criminal Case Management Plan, which required counsel to "advise the

[104] *Cabrera*, 173 A.3d at 1018.

[105] *Outten*, 720 A.2d at 551.

[106] *Burrell*, 953 A.2d at 960.

[107] Corr. Opening Br. at 30.

court of details of the plea agreement offered and rejected by the defendant," "[a] copy of the agreement to be filed with the court," and the presiding judge to "personally address the defendant in open court and colloquy the defendant on his decision to reject the plea."[108]

Owens raised a similar claim in the Superior Court. The court found that trial counsel had not performed deficiently because Rule 43 did not list a final case review as one of the stages of his criminal proceeding in which his presence was required.[109] The court concluded that the case review was not otherwise a critical stage in his proceeding, and thus he did not have a fundamental right to be present.[110] The court found that this case review "is not the kind of traditional and formal confrontation the federal or Delaware Constitution imagined. [It] is merely a docket-management tool that operates as a status conference and streamlines administrative matters before a case is set for trial."[111] The court determined that Owens had to demonstrate prejudice due to his absence, but he did not.[112] Instead, trial counsel "simply relayed that the parties had a pending suppression motion which, if resolved unfavorably, would result in trial. Nothing about [his] presence would have made this update

---

[108] *Id.* at 32.

[109] *Owens*, 2021 WL 6058520, at*11.

[110] *Id.*

[111] *Id.* (cleaned up).

[112] *Id.* at *12.

more illuminating or important."[113] The Superior Court did not abuse its discretion by denying Owens postconviction relief on his ineffectiveness claim.

Owens's trial counsel's performance was not objectively unreasonable. The Sixth Amendment's Confrontation Clause and the common law "privilege of presence" provides a defendant the right to be present during trial.[114] Criminal Rule 43 enshrines this right, although the rule indicates that the right "has definite boundaries."[115] Rule 43(a) requires the defendant's presence "at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence."[116] But, under Rule 43(c), a defendant does not need to be present "[a]t a conference or argument upon a questions of law," "[a]t a reduction of sentence," or "[a]t an arraignment by written pleading."[117] A defendant is required to show prejudice if he does not allege an absence from a traditional or confrontation stage of the trial.[118]

Here, Owens's final case review was not a critical stage of his criminal proceeding that required his personal appearance. To be sure, the State does not

---

[113] *Id.*

[114] *Capano v. State*, 781 A.2d 556, 653 (Del. 2001).

[115] *Id.*

[116] Super. Ct. Crim. R. 43(a).

[117] R. 43(c)(3)-(5).

[118] *Capano,* 781 A.2d at 654.

advocate that the Superior Court should disregard the procedures under its Case Management Plan, which provides that the court should personally address a defendant who does not accept a plea offer at final case review.[119] The issue on appeal, however, is whether Owens's absence was so egregious that it violated his constitutional or common law right to be present, and trial counsel was therefore ineffective for not securing his appearance. His absence did not violate this right. It does not appear that this Court has squarely addressed this issue, but various courts have held that a defendant's right to be present at a critical stage of trial was not violated by an absence at a pretrial conference involving plea agreement discussions.[120]

Elsewhere in his opening brief, Owens cites *Reed v. State* and argues that "[s]ignificantly, the *Reed* Court classified plea negotiations as a *critical stage of the*

---

[119] B12 (New Castle County Super. Ct. Crim. Case Mgmt. Plan).

[120] *See Powell v. United States*, 2008 WL 4196698, at *3 (E.D. Cal. Sept. 11, 2008) (no constitutional right for a defendant to be present during plea negotiations between the prosecution and defense); *People v. Harris*, 222 A.D.2d 522, 522 (N.Y. App. Div. 1995) ("The defendant's contention that his absence from a pretrial conference to discuss a possible plea agreement deprived him of a right to be present at a material stage of the trial is without merit."); *Kruse v. State*, 177 N.W.2d 322, 326 (Wis. 1970) (although not commending the practice of conducting pretrial conferences regarding plea agreements without a defendant present, noting that "such conferences cannot be considered part of any trial in the sense of one's constitutional right to be present when acquiescence to the plea agreement must be made in court and recorded"); *Brennan v. State*, 868 S.E.2d 782, 789 (Ga. 2022) ("disclosure of a tentative plea agreement at a conference . . . is not a critical stage").

proceedings requiring effective assistance of counsel."[121] To the extent Owens is relying on *Reed* to support his contention that his appearance at his final case review was required, his reliance is misplaced. *Reed* did not concern whether a defendant's personal appearance was required at a court proceeding, but it involved the phases of a criminal proceeding in which counsel was constitutionally required to provide effective assistance, including assisting the defendant in withdrawing a guilty plea.[122] In sum, because Owens has not established that he was absent during a traditional or confrontation stage of his criminal proceeding, he must demonstrate prejudice.

Owens has not established prejudice either from any error of trial counsel or from his absence at final case review. Trial counsel did not perform deficiently because the record shows that he discussed the State's plea offers with Owens. Owens did not have the constitutional right to a plea bargain.[123] Further, there was no waiver of Owens's defenses or privileges at trial by his absence from the final case review.[124] Counsel simply indicated to the court that Owens had not accepted a plea offer and there was pending suppression motion. The Superior Court found

---

[121] Corr. Opening Br. at 39 (emphasis added).

[122] *See Reed*, 258 A.3d at 821-22.

[123] *See Dickinson v. State*, 2011 WL 5868352, at *2 (Del. Nov. 22, 2011).

[124] *See Brennan*, 868 S.E.2d at 789.

that Owens's presence would not have enhanced counsel's update.[125] Accordingly, the Superior Court did not abuse its discretion by denying Owens postconviction relief on this claim.

[125] *Owens*, 2021 WL 6058520, at *12.

III. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY DENYING OWENS POSTCONVICTION RELIEF ON HIS CUMULATIVE ERROR CLAIM.

Question Presented

Whether the Superior Court abused its discretion by denying Owens postconviction relief on his cumulative error claim.

Standard and Scope of Review

The denial of postconviction relief is reviewed on appeal for an abuse of discretion.[126] Legal and constitutional questions are reviewed *de novo*.[127] Factual determinations will not be disturbed if they are based on competent evidence and are not clearly erroneous.[128]

Merits of the Argument

Owens argues that the cumulative effect of trial counsel's failure to advise him of the State's plea offer and to secure his appearance at final case review jeopardized the fairness and integrity of the trial process.[129] Owens raised a similar claim in his Rule 61 motion, but the Superior Court found the absence of any errors

[126] *Cabrera*, 173 A.3d at 1018.

[127] *Outten*, 720 A.2d at 551.

[128] *Burrell*, 953 A.2d at 960.

[129] Corr. Opening Br. at 37.

to accumulate.[130] The Superior Court did not abuse its discretion by denying relief on the claim.

"Cumulative error must derive from multiple errors that caused 'actual prejudice.'"[131] A claim of cumulative error, "in order to succeed, must involve 'matters determined to be error, not the cumulative effect of non-errors.'"[132] This Court has recognized that the cumulative impact of errors in extreme circumstances may be a basis for reversing a conviction, even when one trial error standing alone would be construed harmless error.[133] When the individual issues do not present valid claims of any error, however, the accumulation of those claims does not present a new claim warranting independent analysis.[134]

Here, Owens has failed to demonstrate that any of his claims amounts to error in his proceedings. The "cumulative error doctrine" therefore does not apply as there were no errors and no actual prejudice to him.

---

[130] *Owens*, 2021 WL 6058520, at *14.

[131] *Michaels v. State*, 970 A.2d 223, 231 (Del. 2009) (citing *Fahy v. Horn*, 516 F.3d 169, 205 (3d. Cir. 2008)).

[132] *State v. Sykes*, 2014 WL 619503, at *38 (Del. Super. Ct. Jan. 21, 2014) (citing *United States v. Rivera*, 900 F.2d 1462, 1471 (10th Cir. 1990)).

[133] *See Wright v. State*, 405 A.2d 685, 690 (Del. 1979).

[134] *See Torres v. State*, 979 A.2d 1087, 1101-02 (Del. 2009); *Michaels*, 970 A.2d at 231-32.

IV. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY DENYING OWENS POSTCONVICTION RELIEF ON HIS CLAIM THAT HIS TRIAL COUNSEL WAS INEFFECTIVE FOR NOT PRESENTING EVIDENCE AT HIS SUPPRESSION HEARING.

Question Presented

Whether the Superior Court abused its discretion by denying Owens postconviction relief on his claim that trial counsel was ineffective for not presenting evidence at his suppression hearing.

Standard and Scope of Review

This Court reviews the denial of postconviction relief for an abuse of discretion.[135] Associated legal and constitutional questions are reviewed *de novo*.[136] This Court will not disturb factual determinations that are based on competent evidence and are not clearly erroneous.[137]

Merits of the Argument

Owens argues that his trial counsel was ineffective in litigating his suppression motion. He contends that he "was seized upon show of authority by Detective Lynch and that the discarded firearm was fruit of the poisonous tree."[138] Owens complains that trial counsel's decision to not call any witnesses at his

[135] *Cabrera*, 173 A.3d at 1018.

[136] *Outten*, 720 A.2d at 551.

[137] *Burrell*, 953 A.2d at 960.

[138] Corr. Opening Br. at 42.

suppression hearing was objectively unreasonable.[139] According to Owens, the property owner of the address where police found Owens would have denied that he had called the police on the date of the incident.[140] Moreover, the property manager would have denied that the property was vacant or boarded up and had a "No Loitering" sign, which contradicted Detective Lynch's testimony at the suppression hearing.[141] Owens contends that trial counsel did not come into possession of a photo "in the relevant time frame" depicting the property without a "No Loitering" sign.[142] As such, the suppression court would only have been left with his "f[l]ight as a relevant fact in the suppression analysis," which was insufficient to find reasonable articulable suspicion.[143] He argues that "[h]ad trial counsel performed reasonably, the suppression court would have granted the motion and all evidence would have been suppressed."[144]

In the Superior Court, Owens moved to suppress the evidence in his case, alleging that the police's investigatory detention of him was not supported by

---

[139] *Id.* at 43.

[140] *Id.*

[141] *Id.*; A37, A41-42.

[142] Corr. Opening Br. at 43.

[143] *Id.* at 46.

[144] *Id.* at 44.

reasonable articulable suspicion that he was engaged in criminal activity.[145] The Superior Court issued an order denying his suppression motion following an evidentiary hearing.[146] It discussed this Court's decision in *Woody v. State*[147] and indicated that the decision was analogous to Owens's facts.[148] The court found reasonable articulable suspicion to stop Owens based on him sitting at a vacant home with a "No Loitering" sign, and the detective's awareness that the owner had reported people loitering at the property and an earlier call he had received about gunshots in the area.[149] The court also mentioned that the home was located in a high-crime area and that, before the detective could approach him, Owens had stood up, adjusted his waistband, and fled while grasping an object.[150] On appeal, Owens argued that his rights under the Fourth Amendment to the United States Constitution and Article I, § 6 of the Delaware Constitution had been violated, but this Court affirmed his convictions.[151]

---

[145] A765.

[146] A692.

[147] 765 A.2d 1257 (Del. 2001).

[148] *See* A697.

[149] A700.

[150] *Id.*

[151] *See Owens*, 2016 WL 859351, at *1.

Subsequently, Owens raised a similar ineffective-assistance-of-counsel claim in his Rule 61 motion. The Superior Court found that trial counsel was not ineffective for concluding that these witnesses' proffered testimony would have been irrelevant and "would neither support an adverse credibility determination nor overcome the law governing seizures."[152] The court concluded that the "no-loitering sign's existence was not the central issue" for the suppression court, and that "even if the witnesses appeared at the hearing with photographs corroborating their stories, the officer would have been impeached on a detail of relatively little value."[153] The court determined that Owens's "behavior appeared to be that of an armed individual even before the officers parked their car or spoke to him."[154] As for prejudice, while the court determined it was "conceivable" that the rest of the detective's testimony would have been deemed unreliable if he was impeached by other witnesses about the "No Loitering" sign, "it is not substantially likely that their assistance would have resulted in suppression even if they were believed."[155]

As explained below, the Superior Court did not abuse its discretion by denying Owens postconviction relief. Trial counsel did not perform deficiently, and he has

---

[152] *Owens*, 2021 WL 6058520, at *10-11.

[153] *Id.* at *11.

[154] *Id.* at *10.

[155] *Id.* at *11 (cleaned up).

not demonstrated a reasonable probability that the outcome of his proceeding would have been different.

A. Trial counsel did not perform deficiently.

Trial counsel did not perform deficiently under *Strickland*. As the Superior Court concluded, trial counsel considered having witnesses at Owens's suppression hearing but determined that the condition of the house was irrelevant.[156] This determination is supported by credible evidence. In addressing Owens's ineffectiveness claims, trial counsel averred that he consulted with Owens before the suppression hearing and obtained a letter from the property owner denying that she lives there or had called the police.[157] Counsel stated that "[a]t that time, [he] did not believe that the relevant inquiry was whether the house was vacant."[158] Instead, he "believed that the relevant inquiry was whether police seized Owens unlawfully."[159]

In any event, counsel's decision to not call witnesses was objectively reasonable. Even if these witnesses had testified that the house was not vacant or

---

[156] *Owens*, 2021 WL 6058520, at *10.

[157] A264, A729-30.

[158] A730.

[159] *Id.*

did not have a "No Loitering" sign, police still had reasonable articulable suspicion to stop Owens based on their belief that he was engaged in criminal activity.

Individuals are protected from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution and Article I, § 6 of the Delaware Constitution.[160] However, "[t]he United States Supreme Court has repeatedly held that not every encounter with the police is a seizure under the Fourth Amendment."[161] A seizure occurs when "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."[162] Therefore, "mere police questioning does not constitute a seizure. Even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual."[163] In other words, "'law enforcement officers are permitted to initiate contact with citizens on the street for the purpose of asking questions.'"[164] A consensual encounter does not require the individual to answer the officer's questions, and the individual "is free to go about his business."[165]

---

[160] *Juliano v. State*, 254 A.3d 369, 377 (Del. 2020).

[161] *Williams v. State*, 962 A.2d 210, 214 (Del. 2008).

[162] *Id.* (quoting *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988)).

[163] *Id.* at 215 (quoting *Muehler v. Mena*, 544 U.S. 93, 101 (2005)).

[164] *Id.* (quoting *Lopez-Vasquez v. State*, 956 A.2d 1280, 1286 n.5 (Del. 2008)).

[165] *Id.*

Where an encounter with police progresses to an investigatory stop, police must have reasonable articulable suspicion of criminal activity to detain and question the individual under the United States and Delaware Constitutions, which has been codified in the Delaware Code.[166] "In determining whether there was reasonable suspicion to justify a detention, the Court defers to the experience and training of law enforcement officers" and "must examine the totality of the circumstances surrounding the situation as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer's subjective interpretation of those facts."[167]

An individual's flight from police before being seized may be used as a factor in determining whether reasonable articulable suspicion exists. In *Woody*, an officer was surveilling a high-crime area at night in an unmarked police vehicle when he noticed Woody and two other men standing behind a residence.[168] The officer notified three other uniformed police officers on foot patrol in the area.[169] As the

---

[166] *See id.* at 214; *Woody*, 765 A.2d at 1262-64; 11 *Del. C.* § 1902(a) ("A peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination.").

[167] *Woody*, 765 A.2d at 1262-63 (internal quotation and citation omitted).

[168] *Id.* at 1260.

[169] *Id.*

undercover officer exited his police vehicle and walked toward the back of the residence, Woody turned and walked toward the front.[170] Woody subsequently changed his direction and ran toward the back of the house after he saw the three uniformed officers enter the yard.[171] Woody clutched a bulge in his coat pocket while running.[172] When officers identified themselves as police to Woody, he did not stop.[173] Police tackled and handcuffed Woody and located a loaded revolver in his pocket.[174] This Court concluded that police had reasonable articulable suspicion for the detention and pat down.[175] This Court determined that, under *Illinois v. Wardlow*,[176] Woody's flight was properly considered as a factor regarding whether police had reasonable articulable suspicion because his behavior suggested wrongdoing.[177] However, this Court did "not mean to suggest that whenever police witness an individual moving or running away from them it is necessarily indicative of criminal activity."[178] This Court concluded that Woody's flight, in conjunction

---

[170] *Id.*

[171] *Id.*

[172] *Id.*

[173] *Id.*

[174] *Id.*

[175] *Id.* at 1262.

[176] 528 U.S. 119 (2000).

[177] *Id.* at 1265 (citing *Wardlow*, 528 U.S. at 124).

[178] *Id.*

with grabbing a bulge in his coat pocket and his presence in a high-crime area, supported the finding of reasonable articulable suspicion.[179]

Notably, *Wardlow*, the decision *Woody* relied on, concluded that, "unprovoked flight is simply not a mere refusal to cooperate. Flight, by its very nature is not 'going about one's business'; in fact, it is just the opposite."[180] Therefore, "[a]llowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning."[181] Similarly, in *State v. Murray*, this Court found that the defendant's presence in a high-crime area and his unusual movements, which included stutter-stepping, canting, blading, and looking back upon seeing police, provided reasonable articulable suspicion that he was carrying a concealed deadly weapon.[182]

Here, the Superior Court concluded that Owens's "furtive movements and sudden flight were independent, dispositive grounds for denying suppression."[183] Its conclusions have record support. Detective Lynch testified that the location of the

---

[179] *Id.* at 1265-66.

[180] *Wardlow*, 528 U.S. at 125.

[181] *Id.*

[182] *State v. Murray*, 213 A.3d 571, 579 (Del. 2019).

[183] *Owens*, 2021 WL 6058520, at *10.

Wilmington property was in a "high crime and drug area."[184] He was in an unmarked vehicle but was wearing tactical police gear, including a black shirt and tactical vest with "Police" written in bold white letters.[185] As he turned on to 24th Street, he saw Owens, who was sitting on the steps of a house on that street, stand up and blade his lower body while his upper torso faced the police vehicle.[186] Owens adjusted his waistband with his right hand and made eye contact with the detective.[187] When the detective stopped his vehicle, Owens started to walk off the steps while grasping what appeared to be a large rectangular object in his waistband with his right hand.[188] Owens fled as soon as the detective opened his car door.[189] The detective noticed that the object also made a distinct outline above Owens's waistband.[190] The detective commanded Owens to stop.[191] While Owens was fleeing, he pulled the object, which was a loaded firearm, from his waistband with his right hand and threw it on the ground.[192] Even if Owens's evidence would have shown that the house was

---

[184] A37.

[185] *Id.*

[186] *Id.*, A41.

[187] A37, A39.

[188] A38-39, A41.

[189] A37.

[190] A38.

[191] *Id.*

[192] *Id.*

not vacant, the property owner had not called the police, and the property did not have a "No Loitering" sign, police had reasonable articulable suspicion to investigate him for criminal activity based on his presence in a high-crime area, unprovoked flight, and furtive movements. Accordingly, trial counsel did not perform deficiently by not presenting evidence at his suppression hearing.

B. Owens has not demonstrated prejudice.

The Superior Court reasonably concluded that Owens had not demonstrated prejudice from any error of trial counsel.[193] Trial counsel's performance was objectively reasonable. Owens's stop was supported by reasonable articulable suspicion. Even if this Court finds that trial counsel erred by not presenting Owens's evidence at the suppression hearing, Owens has still not demonstrated prejudice. None of the witnesses appeared to have seen the incident unfold, and they would be unable to provide eyewitness testimony about Owens's flight and arrest. He has not shown a reasonable probability that the outcome of his proceeding would have been different had trial counsel called these witnesses to testify. In sum, the Superior Court did not abuse its discretion by denying postconviction relief on Owens's claim because trial counsel had not performed deficiently, and he has not demonstrated prejudice.

[193] *Owens*, 2021 WL 6058520, at *10-11.

CONCLUSION

The State respectfully requests that this Court affirm the judgment below without further proceedings.

/s/ Brian L. Arban
Brian L. Arban (Bar I.D. No. 4511)
Deputy Attorney General
Delaware Department of Justice
Carvel State Office Building
820 North French Street, 5th Floor
Wilmington, Delaware 19801
(302) 577-8500

Dated: January 18, 2022

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RODERICK OWENS,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 6, 2022
	)	
	)	
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 8,458 words, which were counted by MS Word.

/s/ Brian L. Arban
Deputy Attorney General
Bar ID No. 4511

DATE: January 18, 2022