

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RANDALL BOYLES,	§	
	§	No. 310, 2011
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	ID No. 1007018142
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: November 1, 2011

Decided: December 19, 2011

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 19th day of December 2011, it appears to the Court that:

(1) Defendant-Below/Appellant Randall Boyles appeals from his Superior Court conviction and sentence for two counts of Assault Third Degree and one count of Disorderly Conduct. Boyles was charged by indictment with two counts of Robbery First Degree and Disorderly Conduct. On appeal, Boyles contends that his counsel's concession at trial that Boyles was guilty of the included offenses of Assault Third Degree and Disorderly Conduct violated his right to counsel and due process. We find that Boyles has brought prematurely an ineffective assistance of counsel claim that should be raised under Rule 61. Accordingly, we affirm.

(2) Randall Boyles entered the Kitchen Express Chinese Restaurant just before closing on July 20, 2011 and placed a food order with Yan Pin Huang. According to Huang, Boyles then took the food and left without paying. Huang went outside and knocked on the passenger side window of the vehicle in which Boyles was seated. She told Boyles he could not leave without paying. Huang's husband, Qui Zeguang, also exited the store and approached the vehicle. At that point, Boyles got out of the vehicle and punched Zeguang in the body and face. Huang went inside and called 911. Zeguang's father also came outside. Boyles struck Zeguang's father in the head and the eye. Wilmington police officers responded and took Boyles into custody.

(3) Boyles was indicted on two counts of Robbery First Degree and one count of Disorderly Conduct. After a bench trial, the Superior Court found Boyles guilty of two counts of Assault Third Degree, a lesser included offense, and Disorderly Conduct. Boyles was sentenced to one year imprisonment at level 5, suspended after six months, on the first count of Assault Third Degree, and one year imprisonment, suspended after three months, on the second count. He was fined \$500 for Disorderly Conduct. This appeal followed.

(4) Boyles contends that he was denied effective assistance of counsel and a fair trial because his trial counsel conceded his guilt to the lesser-included

offense of Assault Third Degree and Disorderly Conduct. In particular, defense counsel stated in closing arguments to the judge:

And Boyles is guilty of something but he's not guilty of robbery one, especially two counts of it. What the defense is going to put forward is that he's guilty of not conducting himself appropriately as the argument became heated and all these people became involved.

* * *

And [Boyles] certainly didn't conduct himself right under the circumstances. And I am going to ask the Court to find him guilty of disorderly conduct and lesser included offense of assault because of the fight that happened ultimately between these people. But he is not guilty of robbery one, Your Honor.

(5) On direct appeal, this Court generally does not review claims for ineffective assistance of counsel that were not raised below.¹ We have explained:

The rationale for this rule arises from the reviewing Court's need to have before it a complete record on the question of counsel's alleged incompetency, as determined in an evidentiary hearing. Moreover, were a reviewing Court to consider the question without an evidentiary hearing, trial counsel would have neither an opportunity to be heard, nor the chance to defend himself against such charge of incompetency.²

(6) Where a sufficient record exists, however, this Court may review claims of ineffective assistance of counsel *de novo*.³ In *Cooke v. State*, we found a sufficient record to review the defendant's constitutional claims on direct appeal, including his claim for ineffective assistance of counsel, explaining that "the

¹ *Sahin v. State*, 7 A.3d 450, 451 (Del. 2010); *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

² *Duross v. State*, 494 A.2d 1265, 1267 (Del. 1985).

³ *Cooke v. State*, 977 A.2d 803, 840 (Del. 2009).

actions of trial counsel are not disputed and are clearly reflected in the Superior Court proceedings.”⁴

(7) *Cooke* is distinguishable. In *Cooke*, the record included multiple transcripts and communications showing Cooke’s repeated disagreement with counsel’s decision to seek a verdict of guilty but mentally ill.⁵ There, a remand would not have been helpful in developing additional facts.⁶ Here, the record does not show a similar breakdown of the attorney-client relationship that would support review on direct appeal. In fact, Boyles told the Superior Court at the sentencing hearing that he accepted responsibility for fighting and thought his counsel “did a good job.” Trial counsel’s post-verdict letter to the Superior Court also suggests that Boyles and trial counsel discussed the strategy of admitting to a lesser-included offense to avoid the robbery charge. Thus, there are unresolved factual issues as to Boyles’ claim that trial counsel decided to pursue this strategy without Boyles’ prior knowledge or consent.

(8) Here, as in *Sahin*, the record is insufficient for the Court to decide Boyles’ claim for ineffective assistance on direct appeal. Accordingly, the judgment of the Superior Court is affirmed without prejudice to Boyles raising his ineffective assistance of counsel claim in a timely-filed Rule 61 motion.

⁴ *Id.* at 848.

⁵ *Id.* at 814–18.

⁶ *Id.* at 848 & n.69 (citing *State v. Carter*, 14 P.3d 1138, 1144 (Kan. 2000)).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice