

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| RODNEY HITCHENS, | § | |
| | § | |
| Defendant Below- | § | No. 143, 2000 |
| Appellant, | § | |
| | § | |
| v. | § | Court Below—Superior Court |
| | § | of the State of Delaware, |
| STATE OF DELAWARE, | § | in and for Sussex County |
| | § | Cr.A. Nos. S86-05-0174- |
| Plaintiff Below- | § | 0175 |
| Appellee. | § | |

Submitted: June 22, 2000
Decided: July 26, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **BERGER**, Justices

ORDER

This 26th day of July 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Rodney Hitchens, filed this appeal from an order of the Superior Court denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Hitchens claims that his counsel provided ineffective assistance at trial by failing to: challenge the elements of the indictment; object to the jury instruction on a lesser included offense; conduct an adequate investigation; object to various rulings by the Superior Court judge; and

properly preserve the issues for his direct appeal. To the extent that Hitchens has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court.¹

(3) In 1986, Hitchens was found guilty by a Superior Court judge of rape in the first degree, unlawful imprisonment in the second degree and robbery in the first degree. He was sentenced to a total of life in prison, plus 10 years. Hitchens' convictions and sentences were affirmed by this Court on direct appeal.² This is the third postconviction motion pursuant to Rule 61 that Hitchens has filed in the Superior Court.³

(4) A Rule 61 motion for postconviction relief is untimely unless it is filed within three years after the judgment of conviction is final.⁴ The record reflects that Hitchens' judgment of conviction became final when the mandate

¹*Murphy v. State*, Del. Supr., 632 A.2d 1150, 1152 (1993). In his motion for postconviction relief, Hitchens also claimed that the Superior Court judge abused his discretion at trial and sentencing and that the State engaged in prosecutorial misconduct.

²*Hitchens v. State*, Del. Supr., No. 79, 1987, Horsey, J., 1988 WL 19715 (Feb. 24, 1988) (ORDER).

³Hitchens' appeal of the Superior Court's denial of his second postconviction motion was dismissed as untimely. *Hitchens v. State*, Del. Supr., No. 315, 1991, Moore, J., 1991 WL 235426 (Sept. 20, 1991) (ORDER).

⁴Super. Ct. Crim. R. 61(i) (1).

in his direct appeal was issued in March 1988.⁵ The instant Rule 61 motion was filed in March 2000. Hitchens has made no showing that the time bar is inapplicable in his case. He does not assert a retroactively applicable right that was newly recognized after the judgment of conviction became final.⁶ Nor has he demonstrated that the Superior Court lacked jurisdiction over his case or that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.⁷

(5) Hitchens claims that his trial counsel's ineffectiveness, particularly in failing to challenge the elements of the indictment, amounted to a miscarriage of justice. However, in order to prevail on a claim of ineffective assistance of counsel, Hitchens must show that his counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁸ Although not insurmountable, the Strickland

⁵*Jackson v. State*, Del. Supr., 654 A.2d 829, 833 (1995).

⁶Super. Ct. Crim. R. 61(i) (1).

⁷Super. Ct. Crim. R. 61(i) (5).

⁸*Strickland v. Washington*, 466 U.S. 668, 694 (1984).

standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”⁹

(6) Hitchens has failed to demonstrate that his trial counsel’s performance fell below an objective standard of reasonableness. The record does not reflect any defect with respect to the indictment so counsel had no basis for challenging it. Nor has Hitchens demonstrated that any alleged error on the part of his counsel altered the outcome of his trial.

(7) Finally, any complaint by Hitchens that his trial counsel was ineffective is barred as formerly adjudicated since this issue was raised and decided against Hitchens in both of his previous postconviction motions.¹⁰

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁹*Flamer v. State*, Del. Supr., 585 A.2d 736, 753 (1990).

¹⁰Super. Ct. Crim. R. 61(i) (4).