

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH T. DEPUTY,	§
	§
Defendant Below-	§ No. 437, 1999
Appellant,	§
	§
v.	§ Court Below— Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr.A. Nos. IK97-01-0018-20
Plaintiff Below-	§
Appellee.	§

Submitted: March 1, 2000

Decided: March 9, 2000

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

ORDER

This 9th day of March 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Kenneth T. Deputy, 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) Deputy claims the following as grounds for this appeal: 1) his arrest was illegal; 2) the warrant, indictment and Court of Common Pleas commitment sheet were invalid; 3) the Superior Court did not have subject

matter jurisdiction over his case; 4) his conviction was based upon judicial and prosecutorial misconduct; 5) his conviction was supported by insufficient and illegally obtained evidence; 6) the photo lineup, witness identification and jury instructions were defective; 7) his conviction was based upon a conspiracy; 8) his constitutional right to cross examine the witnesses against him was violated; 9) he was sentenced to a non-existent crime and was not given the proper amount of credit for the time he had already served; 10) the use of a stun belt to restrain him during trial prejudiced the jury against him; 11) his counsel was ineffective at trial; and 12) the Superior Court abused its discretion in denying his postconviction motion as procedurally barred.¹

(3) In September 1997, Deputy was convicted by a jury of attempted robbery in the first degree, assault in the first degree and possession of a deadly weapon during the commission of a felony. He was sentenced to a total of 27 years incarceration at Level V, to be suspended after 22 years for

¹In addition to his opening brief, appendix and reply brief, Deputy submitted a letter, which was filed March 1, 2000, asking the Court to consider a commitment sheet from Justice of the Peace Court 7 in reaching its decision. The Court has considered this document.

decreasing levels of probation. This Court affirmed Deputy's conviction and sentence on direct appeal.²

(4) Deputy raised the following issues on his direct appeal: 1) his arrest was illegal; 2) the Superior Court did not have subject matter jurisdiction over his case; 3) the arrest warrant and grand jury indictment were fictitious; 4) the prosecution tampered with witnesses and physical evidence; 5) there was prosecutorial misconduct in losing a trial exhibit; 6) the evidence presented at trial was insufficient for a conviction; and 7) various of his constitutional rights were violated. Deputy reasserted these claims in his postconviction motion. In the absence of any evidence that reconsideration of these claims is warranted in the interest of justice, they are barred as formerly adjudicated and the Superior Court properly so determined.³

(5) With the exception of his claim of ineffective assistance of counsel, all of Deputy's remaining claims could have been asserted in his direct appeal. As such, all such claims are procedurally barred.⁴ Deputy has

²*Deputy v. State*, Del. Supr., No. 541, 1997, Holland, J., 1998 WL 700168 (Aug. 10, 1998) (ORDER).

³Super. Ct. Crim. R. 61(i) (4).

⁴Super. Ct. Crim. R. 61(i) (3).

shown no cause for relief from this procedural default or prejudice from a violation of his rights.⁵ Nor has he shown that the Superior Court lacked jurisdiction or that there was a miscarriage of justice due to a constitutional violation.⁶ There was, furthermore, no abuse of discretion by the Superior Court in determining that these claims were procedurally barred.

(6) In order to prevail on his claim of ineffective assistance of counsel, Deputy 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.⁷ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁸

(7) Deputy's claim that his counsel provided ineffective representation at trial and on appeal is without merit. There is no evidence in the record suggesting errors on the part of counsel either at trial or on appeal

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

⁶Super. Ct. Crim. R. 61(i) (5).

⁷*Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁸*Flamer v. State*, Del. Supr., 585 A.2d 736, 753 (1990).

or that any conduct on the part of counsel negatively influenced the outcome of Deputy's case and the Superior Court properly so determined.

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

BY THE COURT:

/s/ Carolyn Berger
Justice