

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERNEST LAKE,	§	
	§	No. 257, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	Cr. ID Nos. 0812001998,
	§	0808020260, 0803023537,
Plaintiff Below,	§	0702021759, 0611008754,
Appellee.	§	0404003269

Submitted: June 17, 2010  
Decided: September 3, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

**ORDER**

This 3<sup>rd</sup> day of September 2010, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) The appellant, Ernest Lake, filed this appeal from the Superior Court’s April 26, 2010 denial of his motion for postconviction relief pursuant to Superior Court Criminal Rule 61.<sup>1</sup> The appellee, State of Delaware, has filed a motion to affirm the Superior Court judgment on the

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<sup>1</sup> See *State v. Lake*, 2010 WL 1740886 (Del. Super.) (denying motion for postconviction relief).

ground that it is manifest on the face of Lake's opening brief that the appeal is without merit.<sup>2</sup> We agree and affirm.

(2) In March 2009, a Superior Court jury convicted Lake on one of three charged counts of Criminal Solicitation in the First Degree. At sentencing on April 3, 2009, Lake was sentenced on that offense to five years at Level V suspended after four years for one year at Level III. At the same time, Lake was also found in violation of probation (VOP) and sentenced to six years and ten months at Level V suspended after four years and ten months for one year at Level III.<sup>3</sup> Thereafter, with the assistance of new appellate counsel ("new counsel"), Lake voluntarily dismissed his direct appeal.<sup>4</sup>

(3) On November 25, 2009, Lake, with the assistance of new counsel, filed a motion for postconviction relief alleging one claim, *i.e.*, that his trial counsel was ineffective for not objecting to the admission of evidence concerning prior bad acts. Lake's trial counsel responded to the allegation and Lake, through new counsel, replied. By order dated April 26, 2010, the Superior Court denied Lake's motion for postconviction relief. This appeal followed. Lake is proceeding *pro se* on appeal.

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<sup>2</sup> Del. Supr. Ct. R. 25(a).

<sup>3</sup> The VOP portion of Lake's sentence was corrected on April 13, 2009.

<sup>4</sup> See docket at 24, *Lake v. State*, Del. Supr., No. 205, 2009 (Aug. 12, 2009) (filing of notice of voluntary dismissal).

(4) In his opening brief, Lake raises several new claims in addition to his claim of ineffective assistance of trial counsel. Fairly summarized, Lake's new claims appear to argue: (i) several arguments related to a confidential informant; (ii) that the prosecutor failed to produce an unredacted videotape of Lake's police interview; (iii) that his trial counsel was ineffective for not objecting to certain testimony of the complaining witness; (iv) that he was compelled to wearing prison clothes during trial, and (v) that the prohibition against double jeopardy was violated when he was held on and convicted of VOP based on the same facts as the case at bar.

(5) To prevail on the ineffective counsel claim, Lake must meet the two-pronged *Strickland* test by showing that trial counsel performed at a level below an objective standard of reasonableness, and that trial counsel's deficient performance prejudiced the defense.<sup>5</sup> In a thorough and thoughtful decision, the Superior Court analyzed Lake's ineffective assistance of counsel claim and determined that the claim is without merit. Having carefully reviewed that decision in view of the parties' positions on appeal, the Court has concluded that the decision should be affirmed. Lake has not

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<sup>5</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

demonstrated that he was prejudiced as a result of his trial counsel's representation or that his trial counsel's representation was unreasonable.

(6) Lake's remaining claims on appeal, *i.e.* his "new claims," were not raised in the postconviction motion in the Superior Court. A claim that is not fairly presented in the trial court is not considered by this Court absent a showing that review is warranted in the interests of justice.<sup>6</sup> In this case, in the absence of plain error in the record, the Court concludes that the interests of justice do not require consideration of Lake's new claims in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>6</sup> Del. Supr. Ct. R. 8. *See Norwood v. State*, 2010 WL 703107 (Del. Supr.) (citing *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)).