

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |                                |
|--------------------|--------------------------------|
| JARREAU A. AYERS,  | §                              |
|                    | § No. 625, 2007                |
| Defendant Below-   | §                              |
| Appellant,         | §                              |
|                    | § Court Below—Superior Court   |
| v.                 | § of the State of Delaware     |
|                    | § in and for New Castle County |
| STATE OF DELAWARE, | § Cr. ID No. 0109014782        |
|                    | §                              |
| Plaintiff Below-   | §                              |
| Appellee.          | §                              |

Submitted: May 23, 2008

Decided: June 30, 2008

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

**ORDER**

This 30th day of June 2008, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Jarreau A. Ayers, filed an appeal from the Superior Court's November 2, 2007, order 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 October 2002, Ayers was found guilty by a Superior Court jury of Murder in the First Degree, Conspiracy in the First Degree, and two

weapon offenses. He was sentenced to life imprisonment. His convictions and sentences were affirmed by this Court on direct appeal.<sup>1</sup>

(3) In this appeal from the Superior Court's denial of his postconviction motion, Ayers claims that a) the prosecutor engaged in misconduct by referring to matters not properly in evidence and by denigrating a defense witness' credibility; b) the Superior Court improperly admitted prior crimes evidence at trial; and c) his attorney provided ineffective assistance. Ayers argues that, because his first two claims implicate violations of his constitutional rights, the Superior Court erred when it ruled that they were procedurally barred. Moreover, Ayers argues, because his attorney failed to object to the constitutional violations, the Superior Court erred in denying his claim of ineffective assistance of counsel.

(4) We review the Superior Court's denial of a postconviction motion under Rule 61 for abuse of discretion.<sup>2</sup> The Superior Court must first consider the procedural requirements of Rule 61 before addressing any substantive issues.<sup>3</sup> Rule 61(i) (3) provides that any ground for relief that was not asserted in the proceedings leading to the judgment of conviction is

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<sup>1</sup> *Ayers v. State*, 844 A.2d 304 (Del. 2004).

<sup>2</sup> *Outten v. State*, 720 A.2d 547, 551 (Del. 1998).

<sup>3</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

barred, unless the petitioner can establish cause for the procedural default and prejudice from a violation of his rights.<sup>4</sup> The procedural bar of Rule 61(i) (3) also is inapplicable if the petitioner can establish a colorable claim of a miscarriage of justice due to a constitutional violation.<sup>5</sup>

(5) Ayers claims that his constitutional rights were violated a) when the prosecutor established that bullets found at the house where Ayers was staying had the same make and caliber as the shell casings found at the murder scene; b) when the prosecutor questioned the credibility of an eyewitness who stated that Ayers did not shoot the victim; c) when the prosecutor stated during his summation that Ayers admitted to police that he was armed with a gun during a confrontation at the scene of the murder; and d) when the Superior Court permitted cross-examination of a defense witness concerning his statement to police implicating Ayers in the crimes.

(6) We have reviewed each of Ayers' claims and find that there was no violation of his constitutional rights when the prosecutor a) established the similarity between the bullets at Ayers' residence and the shell casings found at the murder scene;<sup>6</sup> b) questioned the credibility of a

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<sup>4</sup> Super. Ct. Crim. R. 61(i) (3) (A) and (B).

<sup>5</sup> Super. Ct. Crim. R. 61(i) (5).

<sup>6</sup> *Smith v. State*, 913 A.2d 1197, 1239-40 (Del. 2006).

defense witness;<sup>7</sup> and c) stated during summation that Ayers had admitted to police that he had a gun during a confrontation at the murder scene.<sup>8</sup> We also find that there was no violation of Ayers' constitutional rights when the Superior Court ruled that the prosecutor could cross-examine a defense witness concerning his statement to police implicating Ayers in the crimes.<sup>9</sup> We, therefore, conclude that the Superior Court was correct when it determined that the above claims were procedurally barred.

(7) Ayers' next claim is that his attorney provided ineffective assistance. In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that a) counsel's representation fell below an objective standard of reasonableness; and b) but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.<sup>10</sup> There is a strong presumption that counsel's conduct was professionally reasonable.<sup>11</sup> In the absence of any evidence of a violation of his constitutional rights, Ayers is foreclosed from arguing that his counsel provided ineffective assistance when he failed to object on that ground to alleged overreaching by the prosecutor and

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<sup>7</sup> *Hooks v. State*, 416 A.2d 189, 204-05 (Del. 1980).

<sup>8</sup> *Id.*

<sup>9</sup> *Smith v. State*, 913 A.2d at 1239-40.

<sup>10</sup> *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

<sup>11</sup> *Albury v. State*, 551 A.2d 53, 59 (Del. 1988).

allegedly erroneous evidentiary rulings by the Superior Court. Therefore, Ayers' claims of ineffective assistance of counsel must fail.

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

BY THE COURT:

/s/ Randy J. Holland  
Justice