

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LUIS ROSAS-JOSE,	§
	§
Defendant Below,	§ No. 45, 2026
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. ID No. 2010010939 (S)
	§
Appellee.	§
	§

Submitted: July 24, 2026
Decided: October 5, 2026

Before **SEITZ**, Chief Justice; **TRAYNOR**, and **GRIFFITHS**, Justices.

ORDER

After consideration of the parties’ briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Luis Rosas-Jose, has appealed a Superior Court decision granting his postconviction counsel’s motion to withdraw and denying his first motion for postconviction relief under Superior Court Criminal Rule 61. For the reasons discussed below, we affirm the Superior Court’s judgment.

(2) The Court previously described the events leading to Rosas-Jose’s convictions as follows:

On October 22, 2020, Delaware State Police were called to a home in Millsboro, Delaware in response to a reported sexual assault. The

complaining witness, K.E.P., was eleven years old at the time of the incident....

K.E.P. testified at trial that she was alone in her parents' home on October 22, 2020, because her parents were at work and her younger sisters were at school. The previous day, Rosas-Jose had learned from K.E.P.'s mother that K.E.P. would be the only person in the house the following morning. K.E.P. testified she awoke on the morning of October 22nd to her "step uncle," Rosas-Jose, grabbing her legs. Although K.E.P. resisted, Rosas-Jose was able to remove her pants. He then vaginally raped her. When K.E.P. kicked him, Rosas-Jose slapped her, causing her to blackout. After some time, K.E.P. regained consciousness. Rosas-Jose continued to rape her, and when she asked him to stop, he showed her tape and threatened to bind her hands and mouth if she did not remain quiet. During the hour that Rosas-Jose remained in K.E.P.'s house, he repeatedly penetrated her vaginally and anally and performed other sexual acts against her.

The physical evidence presented at trial was consistent with K.E.P.'s testimony. A certified sexual assault nurse examined K.E.P. and collected vaginal and rectal swabs from her body. The nurse testified about substantial injuries to K.E.P.'s genital area. The vaginal and rectal swabs contained sperm cells that matched Rosas-Jose's DNA. During their investigation, Delaware State Police also found a roll of Tyvek tape in K.E.P.'s house. There were fingerprints on the tape and the roll that matched Rosas-Jose's fingerprints.

Rosas-Jose testified in his own defense. He explained to the jury that the residence where K.E.P. lived was Rosas-Jose's brother's house, and Rosas-Jose frequently visited the house to see his brother and—on occasion—to borrow tools for work. Rosas-Jose testified that he went to the residence on October 22, 2020 to borrow his brother's nail gun. Rosas-Jose told the jury that K.E.P. made sexual advances toward him while he was there. Rosas-Jose testified that he became aroused and ejaculated on K.E.P., but he denied that any penetration or intercourse occurred.¹

¹ *Rosas-Jose v. State*, 2023 WL 6210709, at *1 (Del. Sept. 25, 2023) (citations omitted).

(3) The jury found Rosas-Jose guilty of one count of first-degree burglary, eight counts of first-degree rape, two counts of first-degree unlawful sexual contact, and one count of offensive touching. The Superior Court sentenced Rosas-Jose to 202 years of unsuspended Level V time, followed by decreasing levels of supervision. On appeal, this Court affirmed Rosas-Jose's convictions.²

(4) In May 2024, Rosas-Jose filed a timely motion for postconviction relief and a motion for appointment of counsel. The Superior Court granted the motion for appointment of counsel. Rosas-Jose's postconviction counsel subsequently moved to withdraw under Superior Court Criminal Rule 61(e)(7). Rosas-Jose submitted a response in his native language of Spanish, which was translated into English. The response asserted multiple claims of ineffective assistance by trial counsel. On January 6, 2026, the Superior Court granted postconviction counsel's motion to withdraw and denied Rosas-Jose's for postconviction relief. This appeal followed.

(5) We review the Superior Court's denial of a motion for postconviction relief for abuse of discretion.³ We review constitutional claims, including claims of ineffective assistance, *de novo*.⁴ The Court considers the procedural requirements of

² *Id.*

³ *Baynum v. State*, 211 A.3d 1075, 1082 (Del. 2019).

⁴ *Id.*

Rule 61 before addressing any substantive issues,⁵ but most claims of ineffective assistance raised in a timely postconviction motion are not procedurally barred.⁶

(6) Rosas-Jose argues that his trial counsel provided ineffective assistance by: (i) failing to inform him sufficiently of the contents of the victim’s medical records before he rejected the State’s plea offer; (ii) failing to call his brother as a trial witness; (iii) failing to investigate the victim’s school records for the date of the crimes; and (iv) failing to investigate the cell phone records of the victim’s mother for the date of the crime.

(7) To prevail on an ineffective assistance of counsel claim, a defendant must demonstrate that: (i) his counsel’s representation fell below an objective standard of reasonableness, and (ii) but for counsel’s unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁷ There is “a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.”⁸ “A reasonable probability is a probability sufficient to undermine confidence in the outcome.”⁹

⁵ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁶ *Green v. State*, 238 A.3d 160, 175 (Del. 2020).

⁷ *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

⁸ *Id.* at 689.

⁹ *Id.* at 694.

(8) Rosas-Jose first claims that his counsel was ineffective for failing to discuss the victim's medical records with him sufficiently before he rejected the State's plea offer. He states that there is a reasonable probability he would have accepted the State's plea offer of fifteen to twenty-five years imprisonment for first-degree rape if counsel had fully informed him about the injuries described in the victim's medical records. The record contradicts this claim.

(9) The State provided materials pursuant to Superior Court Criminal Rule 16, including the relevant medical records, to Rosas-Jose's counsel on December 6, 2021. At the final case review on July 5, 2022, Rosas-Jose's counsel told the court that Rosas-Jose was rejecting the State's plea offer of one count of first-degree rape. As part of the plea offer the State would also agree not to seek an enhanced sentence under 11 *Del. C.* § 4205A¹⁰ and to cap its sentencing recommendation to twenty-five years of Level V incarceration. Rosas-Jose's counsel emphasized that he had recommended to Rosas-Jose that he accept the plea offer rather than proceed to trial.

(10) In reviewing the plea offer with Rosas-Jose, the court confirmed that Rosas-Jose understood he would likely spend the rest of his life in prison if he went to trial and was convicted of most of the offenses. He also indicated that he understood there was a good chance he would not spend the rest of his life in prison

¹⁰ This section permits the State to apply for enhanced sentences for sex offenses under certain circumstances, such as when the victim is under the age of fourteen.

if he accepted the plea offer. Rosas-Jose affirmed that his counsel had discussed the evidence with him and recommended that he accept the plea. He stated that he had received the victim's medical records three months earlier, and that he had a full understanding of the case against him. The contact notes of Rosas-Jose's counsel reflect that he had multiple conversations with Rosas-Jose about the victim's medical records and the plea offer. Rosas-Jose has not shown that his counsel failed to discuss the victim's medical records with him sufficiently before his rejection of the plea offer.

(11) Rosas-Jose next contends that his counsel was ineffective for failing to call his brother as a witness. He claims that his brother, who owned the residence where the crimes occurred, would have testified that Rosas-Jose had continuous permission to enter the residence, and therefore a jury could not have found Rosas-Jose guilty of first-degree burglary. Rosas-Jose is mistaken.

(12) “A person is guilty of burglary in the first degree when the person knowingly enters or *remains unlawfully* in an occupied dwelling with the intent to commit a crime therein.”¹¹ Testimony that Rosas-Jose had permission to enter his brother's home would be irrelevant to whether he remained unlawfully in the home. We previously upheld Rosas-Jose's burglary conviction, concluding that the evidence presented at trial was “sufficient for a rational trier of to conclude that

¹¹ 11 Del. C. § 826 (emphasis added).

Rosas-Jose entered, *or at least remained*, unlawfully in the home.¹² The Superior Court did not err in concluding that Rosas-Jose failed to establish his counsel performed deficiently in not calling his brother to testify or that he was prejudiced by this lack of testimony.

(13) Rosas-Jose's claim that his trial counsel was ineffective for failing to investigate the victim's school records on the date of the crimes is also without merit. The victim testified that she was at home on October 22, 2020 because she had online classes. Rosas-Jose speculates that the victim's school records would show that she was logged into her classes at the time of the incident. He contends that his counsel could have used this information to undermine the victim's credibility, which was especially important in the absence of physical evidence corroborating the victim's testimony.

(14) In making this claim, Rosas-Jose ignores the substantial evidence of his guilt presented at trial. This evidence included vaginal and rectal swabs from the victim's body containing sperm cells that matched Rosas-Jose's DNA and his own testimony in which he admitted to having sexual contact with the eleven-year-old victim. Rosas-Jose failed to show that his trial counsel was ineffective for not investigating the victim's school records or that he suffered prejudice as a result.

¹² *Rosas-Jose*, 2023 WL 6210709, at *6 (emphasis added).

(15) Finally, Rosas-Jose claims that his trial was ineffective for failing to investigate the cell phone records of the victim's mother. He contends that these records might show the victim did not call her mother after the assaults as she and her mother testified. Such information would make no difference to the outcome of the trial, where no one disputed that the assaults were reported to the police on the same day they occurred, Rosas-Jose testified that he had sexual contact with the eleven-year-old victim, and sperm cells matching Rosas-Jose's DNA were found on the victim's body. The Superior Court did not err in concluding that Rosas-Jose failed to show his counsel was ineffective for not obtaining the mother's cell phone records.

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

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice