EFiled: Jul 07 2021 11:35AM EDT
Filing ID 66745184
Case Number 112,2021

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARNELL MARTIN,	)	
	)	
Defendant-Below,	)	
Appellant,	)	No. 112, 2021
	)	
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

Brian L. Arban (Bar I.D. No. 4511)
Deputy Attorney General
Delaware Department of Justice
Carvel Office Building
820 N. French Street, 5th Floor
Wilmington, DE 19801
(302) 577-8500

Dated: July 7, 2021

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES **PAGE**

STATUTES AND RULES

NATURE AND STAGE OF THE PROCEEDINGS

On April 17, 2017, a Superior Court grand jury indicted Darnell Martin for drug dealing (marijuana), aggravated possession of marijuana, conspiracy in the second degree, and failure to use a turn signal. D.I. 2.[1] On July 6, 2017, Martin moved to suppress the evidence seized in his case, which the Superior Court denied after a hearing. D.I. 8, 15, 26. On January 9, 2018, the Superior Court held a stipulated bench trial and found Martin guilty of drug dealing (marijuana) and aggravated possession of marijuana, but not guilty of failure to use a turn signal. D.I. 30. At sentencing on January 9, 2018, the Superior Court merged the drug dealing and aggravated possession offenses. D.I. 30. For drug dealing, the Superior Court sentenced Martin to twenty-five years of Level V incarceration, suspended after two years, for eighteen months of Level II probation. A135-38. Martin appealed, and this Court affirmed on October 12, 2018.[2]

On December 6, 2018, Martin filed a *pro se* motion for postconviction relief under Criminal Rule 61 and a motion for the appointment of counsel. D.I. 39, 40. The Superior Court appointed counsel to assist Martin in postconviction. D.I. 43. On December 3, 2019, Martin filed an amended Rule 61 motion, and trial counsel

[1] "D.I. __" refers to items on the Superior Court Criminal Docket in *State v. Darnell D. Martin*, I.D. #1702005493. A1-11C.

[2] *Martin v. State*, 2018 WL 4959037, at *1 (Del. Oct. 12, 2018).

filed an affidavit on January 22, 2020 addressing Martin's ineffective-assistance-of-trial-counsel claims. D.I. 67, 68. On April 24, 2020, the State responded to Martin's motion, and Martin filed a reply on August 13, 2020. D.I. 69, 72. On November 30, 2020, the Superior Court ordered the parties to submit supplemental briefing regarding the applicability of *Green v. State*[3] and Criminal Rule 61(i)(4)[4] to Martin's postconviction motion. D.I. 73. On December 31, 2020, the parties submitted their supplemental responses. D.I. 74, 75. On March 17, 2021, the Superior Court issued an order dismissing Martin's postconviction motion because Martin lacked standing owing to the completion of his sentence and his claims were moot.[5]

On April 16, 2021, Martin filed a timely Notice of Appeal, and he filed his opening brief on June 4, 2021. This is the State's Answering Brief.

[3] 238 A.3d 160 (Del. 2020).

[4] The rule provides that "[a]ny ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred." Super. Ct. Crim. R. 61(i)(4).

[5] *State v. Martin*, 2021 WL 1030348, at *1 (Del. Super. Ct. Mar. 17, 2021).

SUMMARY OF THE ARGUMENT

I. Martin's argument is denied. The Superior Court did not abuse its discretion in dismissing Martin's postconviction motion. The Superior Court appropriately concluded that Martin did not have standing to seek postconviction relief under Criminal Rule 61. Martin has not met his burden to establish collateral consequences sufficient to provide standing because he fails to provide specific evidence of burdens or disabilities. Martin's allegations of harm are general, hypothetical, or speculative. In any event, Martin's postconviction claim is meritless because Martin has not established that his trial counsel performed deficiently or that he suffered prejudice from any error of counsel.

STATEMENT OF FACTS

Evidence presented at Darnell Martin's suppression hearing established that, on February 7, 2017, Wilmington Police Detective Deshaun Ketler was conducting surveillance for an ongoing drug investigation involving Timothy Atkins, Martin, and Keith Mason. A47. To conduct this surveillance, Ketler operated an unmarked, undercover Honda Accord, which was not equipped with emergency lights or sirens. A58. Ketler saw Martin, who was driving a Jeep Liberty, turn westbound onto Llangolen Drive without using a turn signal. A49. Because Ketler was in an undercover vehicle and unable to perform a traffic stop, F.B.I. Special Agent John Oliver, who was following Ketler in a car equipped with emergency equipment, stopped Martin for the traffic offense. A48-49, A64-65. The traffic stop occurred in the area of Sterling and Dudley Place. A49. Ketler assisted with the traffic stop, arriving right after Oliver pulled over Martin. A49-50.

As Oliver approached Martin's car, Ketler parked directly behind Oliver's car, exited his car, put on a police vest, and approached the driver's side of Martin's car, standing with Oliver. A50, A59, A65-66. Ketler immediately "smelled a large amount of marijuana emanating from the vehicle." A52. Ketler stood next to Oliver when Oliver engaged Martin at the traffic stop. A66. Oliver asked Martin about the odor of marijuana coming from the car; Martin responded that he had a "small amount of marijuana" in the car and possessed a medical marijuana card. A52.

Because the officers suspected that Martin possessed a significant quantity of marijuana, a K-9 was called to the scene. A52.[6] Oliver and Ketler removed Martin from the Jeep, and Martin sat, unhandcuffed, on the hood of the police car as the K-9 performed a smell of the car. A52, A69. The K-9 alerted to the vehicle. A53. The police searched the Jeep and located a black bag in its back seat containing a large quantity of suspected marijuana. A53-54.[7] Upon discovering the suspected marijuana, the police arrested Martin. A53-54. Ketler was present from the initiation of the traffic stop to Martin's arrest. A68.

Martin testified at the hearing. A77. According to Martin, at 6:30 p.m. on February 7, 2017, he drove in his Jeep to a trucking yard in New Castle to see if his tractor trailer was operational. A79. Martin was pulled over by law enforcement after he left the yard to return home. A80. Martin claimed that one officer went to the driver's side of his car, and the other responded to the passenger side. A81. Martin denied that Ketler was present at the traffic stop.[8] A81. Martin claimed

---

[6] Ketler testified that he believed there was an "abundance" of marijuana because "[i]t smelled like . . . one person smoking in the vehicle verses [sic] ten people smoking in the vehicle." A70. Ketler stated that "you could smell it as soon as you walked up to the vehicle." A52.

[7] At Martin's stipulated bench trial, a report from the testing of the suspected controlled substance by NMS Labs was admitted into evidence and showed that the substance found in the vehicle was marijuana and weighed approximately 2,305 grams. A128.

[8] Martin's counsel asked how Martin was sure that Ketler was not present at the traffic stop. A81. Martin responded, "He's a black dude, and there were no black

Oliver yanked him out of the car, put him in handcuffs, and walked him down to Oliver's SUV. A83. Martin denied seeing Ketler's Honda Accord, and claimed it was not until Oliver got him back to his vehicle that he confronted him about the odor of marijuana. A83. Martin alleged that Oliver asked for consent to search his car, which he declined. A85. Martin testified that a K-9 arrived on scene, but Oliver waved off the K-9, telling the handler that Martin had a "medical marijuana card." A86. The K-9 and his handler left without searching the car. A86. Martin claimed he was taken to the Wilmington Police Department and held in a cell for twenty-seven hours. A87.

dudes out there." A81. Martin indicated that all of the police on the scene were "white guys" and was "sure it wasn't no black dudes there." A82.

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DISMISSING MARTIN'S POSTCONVICTION MOTION.

Question Presented

Whether the Superior Court abused its discretion in dismissing Martin's postconviction motion.

Standard and Scope of Review

This Court reviews the denial of postconviction relief for abuse of discretion.[9] It reviews associated legal and constitutional questions *de novo* and will assess the record to determine whether competent evidence supports the findings of fact below.[10] This Court can affirm the Superior Court's decision on grounds different than those articulated by the Superior Court.[11]

Merits of the Argument

In his timely-filed Rule 61 motion, as amended, Martin claimed that his trial counsel was ineffective for not arguing in support of Martin's suppression motion and on direct appeal that police lacked probable cause because the strength of marijuana's odor does not correlate to its quantity. A394, A408. In dismissing his motion, the Superior Court found that "[o]ne seeking [postconviction] relief must be 'in custody'" and that Martin was fully discharged from probation in February 2021

---

[9] *Cabrera v. State*, 173 A.3d 1012, 1018 (Del. 2017).

[10] *Id.*; *Outten v. State*, 720 A.2d 547, 551 (Del. 1998).

[11] *See Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

and "released from all 'custody' under the conviction he now challenges."[12] Concluding that Martin would suffer no collateral consequences because of his lengthy criminal history, the Superior Court found that Martin lacked standing to file the motion and that his postconviction claims were moot.[13]

On appeal, Martin argues that "[t]he Superior Court erred in dismissing [his] Motion for Postconviction Relief, as [he] suffered collateral legal disabilities and burdens as a result of his conviction, thereby exempting him from the 'in custody' requirement of Superior Court Rule of Criminal Procedure 61." Opening Br. at 12. Martin complains that the Superior Court "did not seek the parties' position before issuing its Order dismissing Mr. Martin's case," but it instead "*sua sponte* reviewed Mr. Martin's decades-old closed cases to determine Appellant had a felony record and based its ruling on that independent review." *Id.* at 17. Noting that Delaware's Governor had pardoned him in June 2013, prior to his 2018 conviction, Martin asserts that the Superior Court overlooked the pardon and argues that "his conviction in the instant matter rendered him a felon, causing him to lose various constitutional rights and suffer other collateral consequences." *Id.* at 12, 17. Relying on *Gural v. State*,[14] Martin contends that his postconviction motion survives the completion of

[12] *Martin*, 2021 WL 1030348, at *1.

[13] *Id.*

[14] 251 A.2d 344 (Del. Feb. 26, 1969).

his sentence as the "*Gural* Court's hypothetical defendant" because his conviction "blemished an otherwise clean record." *Id.* at 19.

Martin's arguments are unavailing. As an initial matter, although an unconditional pardon restores all civil rights, this Court also explained in *Heath v. State* that "it did not obliterate the public memory of the offense" and "does not erase guilt."[15] Similarly, in *State v. Skinner*, this Court stated that a "pardon involves forgiveness and not forgetfulness and it does not wipe the slate clean."[16]

Superior Court Criminal Rule 61(a)(1) provides that a postconviction motion may be made "by a person in custody under a sentence of this court."[17] "A person loses standing to move for postconviction relief under Rule 61 when they are not in custody for the underlying offense or challenged sentence."[18] "This Court has consistently held that a defendant who has been discharged from probation and is not subject to any future custody on a conviction has no standing to seek relief under Rule 61."[19] Moreover, the fact that Rule 61(a)(1) has been amended to remove the

---

[15] *Heath v. State*, 983 A.2d 77, 81 (Del. 2009).

[16] *State v. Skinner*, 632 A.2d 82, 85 (Del. 1993) (internal quotations and citation omitted).

[17] Super Ct. Crim. R. 61(a)(1).

[18] *Short v. State*, 2015 WL 4199849, at *1 (Del. July 18, 2013).

[19] *Coleman v. State*, 2015 WL 5096047, at *2 (Del. Aug. 27, 2015) (citing *Crisco v. State*, 2015 WL 257867 (Del. Jan. 20, 2015); *Baltazar v. State*, 2015 WL 257334 (Del. Jan. 20, 2015); *Anderson v. State*, 2014 WL 7010017 (Del. Nov. 11, 2014); *Ruiz v. State*, 2011 WL 2651093 (Del. July 6, 2011); *Lewis v. State*, 2012 WL

prior version's language conferring standing to those who are "subject to future custody" evidences an intent to limit, not expand, the scope of the rule.[20] Although petitioners may initially have standing when they file their Rule 61 motions because they are in custody, the subsequent satisfaction of their sentences may result in the loss of standing.[21]

In *Gural*, this Court dismissed an appeal from the denial of postconviction relief as moot when the appellant completed his sentence while the appeal was pending.[22] This Court considered three possible rules for evaluating whether to dismiss the appeal: (1) the traditional rule, which provides that "the satisfaction of the sentence, Per se, renders the case moot;" (2) the liberal rule, where "the defendant's interest in clearing his name, Per se, permits review of or attack upon a conviction;" and (3) the federal rule, which provides that "the satisfaction of the sentence renders the case moot unless, in consequence of the conviction or sentence, the defendant suffers collateral legal disabilities or burdens."[23] In adopting the

---

130700 (Del. Jan. 17, 2012); *Cammile v. State*, 2009 WL 3367065 (Del. Oct. 20, 2009)).

[20] *See*, *e.g.*, *Ruiz*, 2011 WL 2651093, at *1 (discussing prior version of rule).

[21] *See Crisco v. State*, 2015 WL 257867, at *1 ("Once a defendant is not in custody or subject to future custody for an underlying conviction, the defendant loses standing to seek postconviction relief under Rule 61").

[22] *Gural*, 251 A.2d at 344-45.

[23] *Id.* at 344.

federal rule, this Court placed the burden of "demonstrating specifically a right lost or disability or burden imposed, by reason of the instant conviction" on the appellant.[24] By placing the burden on the appellant to show collateral consequences, unlike other courts, *Gural* did not appear to rely on any presumptions that such consequences exist.[25] In view of the appellant's prior convictions, this Court concluded that he had not met his burden, noting that "[t]he position of the appellant *may* have more merit if this conviction blemished an otherwise clean record."[26]

Here, although the Superior Court neither provided Martin with an opportunity to address the issue of collateral consequences nor discussed the effect of the Governor's pardon on his standing, it nevertheless properly found that Martin had not satisfied the "in custody" requirement of Rule 61(a)(1). Martin contends that, as a felon, he cannot serve on a jury or own or possess a firearm or ammunition; his "ability to obtain employment will be affected, as he could be disqualified by

---

[24] *Id.* at 345; *see also Paul v. State*, 2011 WL 3585623, at *1 (Del. Aug. 15, 2011).

[25] *See, e.g.*, *Spencer v. Kemna*, 523 U.S. 1, 10 (1998) (noting that, although the Court had been presuming collateral consequences in certain instances, the practice of presuming such consequences "sits uncomfortably besides the long-settled principle that standing cannot be inferred argumentatively from averments in the pleadings, but rather must affirmatively appear in the record") (internal quotations and citation omitted); *Ruiz v. United States*, 990 F.3d 1025, 1032 (7th Cir. 2021) (noting that relying on the "general presumption" of collateral consequences does not "account for the reality that [Ruiz's] pursuit of habeas relief depends on identifying a collateral consequence that rises to the level of impacting his ongoing 'custody'").

[26] *Id.* (emphasis added).

public employers due to his felony conviction," and "[f]or some professions, [he] could be outright excluded due to his felony conviction;" he is "ineligible to receive federal student loans for a period of time;" and he will suffer stigma. Opening Br. at 18. Instead of providing specific evidence of burdens or disabilities related to his specific circumstances, Martin's claims amount to generalizations applicable to all convicted felons, hypothetical harm, or speculation.[27]

Considering Martin's claim of a collateral consequence based on an inability to serve on a jury, this broad claim, without more, does not amount to a sufficient collateral consequence to confer standing.[28] Martin "does not claim to have pursued jury service and been denied, nor does [Martin] evince any intent or desire to serve on a jury in the future."[29] Martin has not provided specific evidence that he has

---

[27] *See Salahuddin v. United States*, 2018 WL 5342766, at *5 (D.N.J. Oct. 29, 2018) (in the context of a petition for a writ of coram nobis, discussing split among circuit courts regarding the standard for sufficiently alleging collateral consequences, but also noting that the majority of circuits have concluded that "felony status, alone, is not sufficient; rather, a petitioner must articulate an ongoing harm which flows from the allegedly invalid conviction").

[28] *See Barnetson v. United States*, 2016 WL 3023156, at *3 (S.D.N.Y. May 6, 2016) (in denying a petition for writ of coram nobis, noting that "[i]f loss of the right to serve on a jury constituted a civil disability for purposes of the writ, virtually all convictions would qualify and the [Second Circuit's] continuing legal consequence test would be rendered superfluous") (quoting *Moskowitz v. United States*, 64 F. Supp. 3d 574, 581 (S.D.N.Y. 2014)); *Salahuddin*, 2018 WL 5342766, at *5 (concluding that the petitioner had raised insufficient collateral consequences although asserting that he was ineligible to sit on a jury).

[29] *Moskowitz*, 64 F. Supp. 3d at 581.

sought employment and student loans but was denied access to them because of his conviction.[30] Standing alone, Martin's bald contention about an inability to possess a firearm or ammunition is insufficient to demonstrate a collateral consequence.[31] Martin likewise does not support his assertion about suffering stigma from his conviction with specific evidence. Nevertheless, such stigma would constitute "reputational or incidental injury which would accompany all convictions" and therefore does not support granting relief.[32]

---

[30] *United States v. Biondi*, 2014 WL 1301144, at *4 (E.D. Pa. Apr. 1, 2014) (denying motion to vacate judgment and concluding that movant had not provided evidence that his convictions deprived him of "any right or opportunity that would otherwise be available to him" regarding potential employment with a municipality).

[31] *See Howard v. United States*, 962 F.2d 651, 655 (7th Cir. 1992) ("Howard has not demonstrated that his inability to possess a firearm poses a serious present harm to him."); *United States v. Loftus*, 796 F. Supp. 815, 827 (M.D. Pa. 1992) (granting coram nobis relief, but also concluding that petitioner had not sufficiently established a collateral consequence from his convictions based on an inability to own a firearm because he "does not demonstrate a desire to own a firearm"); *Salahuddin*, 2018 WL 5342766, at *5 (declining to find a sufficient collateral consequence based on petitioner's assertion that he cannot own a firearm). *But see Kipp v. State*, 704 A.2d 839, 842 n.1 (Del. 1998) ("That a convicted felon may not own or possess a firearm is . . . [among] the list of collateral consequences which follow from a guilty plea.").

[32] *Blanton v. United States*, 896 F. Supp. 1451, 1457 (D. M.D. Tenn. 1995); *see United States v. Keane*, 852 F.2d 199, 203 (7th Cir. 1988) ("Criminal convictions sometimes produce financial penalties and diminish the reputation of the defendant, but these do not entail continuing legal effects of a judgment" for granting coram nobis relief); *Dixon v. United States*, 2015 WL 851794, at *12 (S.D.N.Y. Feb. 27, 2015) ("Mere stigma or reputational harm" insufficient for relief).

In any event, Martin's postconviction claim is meritless that his trial counsel was ineffective under *Strickland v. Washington*[33] in not arguing that police lacked probable cause that Martin possessed a large quantity of marijuana based on the drug's odor. Relying on authority from Massachusetts and Maryland, Martin alleges that "other jurisdictions have held that an individual cannot determine the quantity of a substance based on the strength of the aroma." A406. Martin contends that "[g]iven that Delaware law was clear at the time that the odor of marijuana, standing alone was sufficient to constitute probable cause, it was incumbent upon Trial Counsel to articulate an argument as to why such rule should *not* be strictly applied in cases where the defendant had been issued a medical marijuana card." A446 (emphasis in original). Martin further claims that "Trial Counsel had a responsibility to research holdings in jurisdictions that had passed medical marijuana laws, or had either legalized or decriminalized the use and possession of marijuana to determine how those courts weighed the odor of marijuana in a probable cause analysis." A446-47. Martin is incorrect.

Martin cannot show that trial counsel's performance was deficient under *Strickland*. There is a strong presumption that trial counsel's legal representation of Martin was professionally reasonable.[34] A court evaluating an ineffective-

[33] 466 U.S. 668 (1984).

[34] *Flamer v. State*, 585 A.2d 736, 753-54 (Del. 1990) (citations omitted).

assistance-of-counsel claim "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct."[35] Although counsel has a duty to learn the relevant law of a case,[36] "[o]nly in a rare case can an attorney's performance be considered unreasonable under prevailing professional standards when she does not make an [argument] which could not be sustained on the basis of the existing law."[37]

Here, Detective Ketler testified at Martin's suppression hearing that he smelled both smoked and unsmoked marijuana during the traffic stop. A70-71. He also analogized the strength of the odor to "one person smoking in the vehicle verses [sic] ten people smoking in the vehicle." A70. This Court has concluded that "[m]arijuana was, and remains, contraband subject to forfeiture" and that the "[u]se or consumption of marijuana in a moving vehicle is a misdemeanor."[38] This Court has also determined, "[t]hat possession of personal uses of marijuana is not a criminal offense does not render marijuana odors, raw or burnt, irrelevant to

---

[35] *Strickland*, 466 U.S. at 690.

[36] *See e.g.*, *White v. State*, 173 A.3d 78 (Del. 2017) (counsel's failure to ask for a lesser-included offense instruction based on mistaken understanding of Delaware law was objectively unreasonable).

[37] *United States v. Davis*, 394 F.3d 182, 189 (3d Cir. 2005) (internal quotation and citation omitted).

[38] *Valentine v. State*, 2019 WL 1178765, at *2 (Del. Mar. 12, 2019).

determinations of probable cause."[39] Moreover, "the odor of an illegal drug is sufficient to constitute probable cause for the search of a car."[40] Based on controlling Delaware precedent, police had probable cause, and the existence of a medical marijuana card would not have affected the analysis. Trial counsel was not ineffective in not researching persuasive authority on this issue. Martin's arguments are not supported by existing Delaware precedent and would have required his trial counsel to have argued for a change in the law. There was no duty of trial counsel to have done so.

Even if trial counsel had performed deficiently, Martin has not demonstrated prejudice. Martin has not shown a reasonable probability that the outcome of his suppression motion or direct appeal would have been different if counsel had presented this argument, which was based on persuasive authority.[41] Therefore, the Superior Court did not abuse its discretion in dismissing Martin's motion for postconviction relief.

---

[39] *Id.*

[40] *Law v. State*, 2018 WL 2024868, at *2 (Del. Apr. 30, 2018).

[41] *Strickland*, 466 U.S. at 694.

CONCLUSION

For the foregoing reasons, the judgment of the Superior Court should be affirmed.

/s/ Brian L. Arban
Brian L. Arban (Bar I.D. No. 4511)
Deputy Attorney General
Delaware Department of Justice
Carvel State Office Building
820 North French Street, 5th Floor
Wilmington, Delaware 19801
(302) 577-8500

Date: July 7, 2021

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARNELL MARTIN,	)	
	)	
Defendant-Below,	)	
Appellant,	)	No. 112, 2021
	)	
v.	)	On Appeal from the
	)	Superior Court of the
STATE OF DELAWARE,	)	State of Delaware
	)	
Plaintiff-Below,	)	
Appellee.	)	

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 2016.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 3,780 words, which were counted by Microsoft Word 2016.

Dated: July 7, 2021 /s/ Brian L. Arban