

SUPREME COURT OF DELAWARE

Cannon v. State

992 A.2d 1236 (Del. 2010) · No. No. 596, 2009 · Decided April 1, 2010

SUMMARY

The Delaware Supreme Court affirmed the denial of Allen Cannon's motion for postconviction relief under Superior Court Criminal Rule 61. The court rejected his ineffective-assistance claims concerning the admission and use of out-of-court identification statements, hearsay, precautionary instructions, crime-scene investigation, and subpoenaing a witness. The court held that the claims lacked merit, were formerly adjudicated, or failed to establish prejudice.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Carolyn Berger, Justice; Holland, Justice; Berger, Justice; Jacobs, Justice
JURISDICTION	Delaware
DECIDED	April 1, 2010
DOCKET	No. 596, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cannon appealed the Superior Court's order accepting the Superior Court Commissioner's report and denying his motion for postconviction relief under Superior Court Criminal Rule 61.
STANDARD OF REVIEW	The court reviewed the denial of postconviction relief for claims of ineffective assistance of counsel under the Strickland standard, requiring deficient performance and resulting prejudice. Claims previously adjudicated were barred under Superior Court Criminal Rule 61(i)(4), and claims not previously presented were deemed waived.
PRECEDENTIAL VALUE	Published Delaware Supreme Court opinion; the source does not expressly state a separate precedential designation.
PARTIES	Allen Cannon v. State of Delaware

TOPICS

state post-conviction relief

ineffective assistance

post-conviction relief

appellate procedure

hearsay

PRACTICE AREAS

Postconviction criminal procedure

Ineffective assistance of counsel

Appellate procedure

Evidence

QUESTIONS PRESENTED

1. Whether trial counsel was ineffective for failing to object to the admission of the witnesses' out-of-court statements under Delaware Code title 11, section 3507.
2. Whether trial counsel was ineffective for failing to request a limiting instruction concerning the jury's use of the out-of-court statements.
3. Whether trial counsel was ineffective for failing to raise a Confrontation Clause objection to the statements.
4. Whether trial counsel was ineffective for failing to object to Richard Dendy's testimony about what he had heard from people on the street as hearsay.
5. Whether trial counsel was ineffective for failing to request precautionary instructions under *Acosta v. State*.
6. Whether trial counsel was ineffective for failing to conduct a forensic examination of the crime scene.
7. Whether trial counsel was ineffective for failing to subpoena the evidence detection officer to testify about fingerprint testing of shell casings.
8. Whether Cannon was entitled to a remand for an evidentiary hearing concerning an alleged waiver of his right to a jury trial on one weapon charge.

HOLDINGS

1. There was no basis for trial counsel to object to the admission of the witnesses' statements because both declarants testified on direct and cross-examination about the shooting and their original statements to police.
2. A witness's out-of-court statement admitted under section 3507 is admissible as substantive evidence of guilt; therefore, counsel was not ineffective for failing to request an instruction limiting the statements to credibility.
3. The admission of the witnesses' statements did not violate the Confrontation Clause because Cannon's counsel had the opportunity to cross-examine both witnesses at trial.
4. Cannon's claim concerning counsel's failure to object to Richard Dendy's testimony about statements from people on the street was barred because the identical issue had been unsuccessfully raised on direct appeal.
5. Cannon was not entitled to precautionary instructions under *Acosta* because the unusual circumstances requiring such instructions in *Acosta* were absent: the shooting itself was undisputed, and both witnesses testified at length about their changed accounts.

6. Cannon failed to establish ineffective assistance based on counsel's failure to conduct a forensic examination because the disputed issue was the shooter's identity, not the circumstances of the shooting, and counsel's investigative decision was presumed to be sound trial strategy.
7. Even assuming counsel performed deficiently by failing to subpoena the evidence detection officer, Cannon failed to show prejudice because counsel elicited the needed testimony from the chief investigating officer.

KEY QUOTATIONS

“In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.” (¶ 5)

“However, under §3507, an out-of-court statement by a witness is admissible as substantive evidence of guilt.” (¶ 7)

FACTUAL BACKGROUND

Cannon was convicted after a jury trial of offenses arising from the July 31, 2006 shooting of Terrence Dendy in Wilmington, Delaware. At trial, Dendy and his father, Richard Dendy, recanted their prior out-of-court identifications of Cannon as the shooter, but the jury credited their statements to police and found Cannon guilty. Cannon's postconviction claims challenged trial counsel's handling of those statements, hearsay, precautionary jury instructions, crime-scene investigation, and a proposed defense witness concerning fingerprint testing of shell casings.

PROCEDURAL HISTORY

Cannon was convicted in the Superior Court of Delaware of reckless endangering in the first degree, criminal mischief, and two weapon offenses arising from a shooting. The Delaware Supreme Court affirmed his convictions on direct appeal. The Superior Court Commissioner recommended denial of Cannon's Rule 61 motion, the Superior Court accepted that recommendation, and Cannon appealed; the Supreme Court affirmed and denied a related motion to remand as moot.

DISPOSITION

affirmed

CASES CITED

- Cannon v. State, Del. Supr., No. 295, 2007, Steele, C.J. (May 6, 2008) (en banc)
- Acosta v. State, 417 A.2d 373, 376-77 (Del. 1980)
- Strickland v. Washington, 466 U.S. 668, 688, 689, 694 (1984)
- Flamer v. State, 585 A.2d 736, 753 (Del. 1990)
- Younger v. State, 580 A.2d 552, 556 (Del. 1990)

- Keys v. State, 337 A.2d 18, 22-23 (Del. 1980)
- Somerville v. State, 703 A.2d 629, 631 (Del. 1997)

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