



04/15/94 DONALD L. TORRES v. STATE DELAWARE

1994 | Cited 0 times | Supreme Court of Delaware | April 15, 1994

ORDER

This 15th day of April, 1994, it appearing that:

1) In February 1990, Donald L. Torres ("Torres"), age fifteen was convicted by a jury of four counts of intentional first degree murder and four counts of reckless first degree felony murder. 11 Del.C. §§ 636(a)(1) & (2). The Superior Court sentenced Torres to eight consecutive terms of life imprisonment without possibility of probation or parole or any other reduction. 11 Del.C. § 4209. On direct appeal, this Court, sitting en banc, affirmed the convictions. *Torres v. State*, Del. Supr., No. 151, 1990, Christie, C.J. (Feb. 7, 1992) (ORDER) (en banc). In August 1993, Torres moved for post-conviction relief, which was denied by the Superior Court. Torres now appeals to this Court.

2) At approximately midnight on February 24, 1989, Torres broke into the house of his neighbor Harry Godt, knowing that Mr. Godt, his wife and two young children were asleep on the second floor. Torres spread kerosene over the kitchen floor and stairway to the second floor of the house. Using his lighter and some newspaper, Torres ignited the kerosene. From outside his apartment, Torres watched the flames spread through the Godt's house. He also watched Mr. Godt come running outside the house and then go back inside to attempt to save his family. Harry Godt, his wife and two young children all perished in the fire.

3) On August 17, 1993, Torres filed a motion for post-conviction relief pursuant to Superior Court Criminal Rule 61, raising three grounds in support of his motion: 1) that his due process rights were violated by "co-defendant's" incriminating testimony; 2) the amenability hearing for defendant was plain error because "the defense attorney failed to represent and show evidence of intent"; and 3) defense counsel was ineffective because he made no pre-trial investigation. The Superior Court summarily denied this motion for post-conviction relief. On appeal from this denial, Torres contends 1) that the Superior Court failed to conduct an appropriate reverse amenability hearing pursuant to 10 Del.C. § 939(b); 2) that there was insufficient evidence to convict him because he was not convicted of arson; and 3) that he had ineffective assistance of counsel because the defense counsel did not "protect his rights." All of these contentions are without merit and we, therefore, affirm.

4) Torres' first contention fails as procedurally barred because it was not raised in his motion for post-conviction relief. Indeed, an examination of the record reveals that this is the first time that this issue has ever been raised by Torres. This Court will not entertain an argument that was not fairly presented to the trial court below. SUPR. CT. RULE 8. Even if this Court were to entertain Torres'



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contention, the record clearly demonstrates that the Superior Court did in fact conduct a reverse amenability hearing pursuant to section 939(b). After an evidentiary hearing exploring the nature of the alleged offense and the character of the defendant, the Superior Court held that it was "satisfied that transfer to Family Court is neither in the interest of society nor the defendant." State v. Torres, Del. Super., Cr.A. No. IN89-04-1009 thru 1016, Babiarz, J., memo. op. at 4 (Feb. 1, 1990). See Marine v. State, Del. Supr., 607 A.2d 1185, 1211-12, cert. dismissed, 113 S.Ct. 28 (1992).

5) Torres' second contention, that there was insufficient evidence to convict because he was not convicted of arson, must also fail. This same argument was squarely addressed and decided by this Court on Torres' direct appeal from his convictions. Torres v. State, Del. Supr., No. 151, 1990, order at 13-15.

6) Torres' final argument is that he had ineffective assistance of counsel. Torres makes only a conclusory allegation that counsel failed to protect his rights. In order to prevail on an ineffective assistance of counsel claim, Torres must allege and establish facts showing that: 1) defense counsel's conduct fell below "an objective standard of reasonableness"; and 2) counsel's actions were prejudicial, i.e., there is a reasonable probability that, but for the counsel's error, the result would have been different. Brawley v. State, Del. Supr., No. 372, 1992, Moore, J., order at 3 (Oct. 7, 1992) (citations omitted). Torres has alleged no facts to show either that counsel's conduct was not objectively reasonable, nor that he was in any way prejudiced by the action or inaction of counsel. Therefore, Torres' final contention is also without merit.

NOW, THEREFORE, IT IS ORDERED that the above appeal be, and the same hereby is,

AFFIRMED.

BY THE COURT:

A.G.T Moore II, Justice

