

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,	)	
	)	Cr. ID Nos. 1703012024
Plaintiff,	)	1703012026
	)	1703012045
v.	)	1703012089
	)	1703012139
BRANDON C. DIXON,	)	1703012057
	)	1703012008
Defendant.	)	1703012169

Submitted: October 8, 2019

Decided: January 10, 2020

**COMMISSIONER'S REPORT AND RECOMMENDATION THAT  
DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF  
SHOULD BE DENIED.**

James K. McCloskey, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for the State.

Brandon C. Dixon, James T. Vaughn Correctional Center, Smyrna, Delaware,  
*pro se.*

PARKER, Commissioner

This 10th day of January 2020, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

**FACTS AND PROCEDURAL HISTORY**

1. On May 30, 2017, Defendant Brandon C. Dixon was charged in a 71-count indictment on numerous robbery first degree, firearms, and other related offenses stemming from an armed robbery crime spree that occurred in January, February and March of 2017.
2. In each of the robberies, either Dixon and/or his co-defendant, Darius Johns, entered a business wearing a mask, armed with a gun and demanded money from a victim.<sup>1</sup> During a robbery at J&K Liquor Store in Middletown on February 21, 2017, Dixon stole a victim's cell phone and then sold the cell phone to a store in the Concord Mall the next day. From video surveillance at the robbery site and at the site where the cell phone was sold the following day, detectives from the Delaware State Police and Middletown Police Department were able to identify Dixon as a suspect in that robbery.<sup>2</sup>
3. Thereafter, detectives obtained a Superior Court search warrant for a GPS device to be placed on Dixon's vehicle for a period of thirty days.<sup>3</sup> The GPS device

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<sup>1</sup> See, Affidavit of Probable Cause attached as Exhibit B to Justice of Peace Court No. 11 Commitment filed in the Superior Court on March 28, 2017.

<sup>2</sup> *Id.*

<sup>3</sup> See, Superior Court Docket No. 34 in Criminal ID No. 1703012089- State's Response to Dixon's Rule 61 motion, Exhibit 1- copy of the search warrant.

was placed on Dixon's vehicle on March 10, 2017. On March 17, 2017, while detectives were monitoring Dixon's movement, Dixon committed another armed robbery at the Estetcia y Pelugueria Extasis (Hair Salon). The Delaware State Police observed Dixon and his co-defendant enter the hair salon wearing masks, leaving the hair salon, running towards Dixon's vehicle, and leaving the scene in Dixon's vehicle.<sup>4</sup>

4. The police stopped the vehicle after the robbery and placed both Dixon and his co-defendant Johns in custody.<sup>5</sup> Detectives recovered masks, knit hats, several cell phones stolen during the hair salon robbery, a victim's purse, a handgun and ammunition in the vehicle. Dixon was wearing a pair of black Steelers gloves that the suspect in several of the other robberies was observed wearing on surveillance videos of those robberies.<sup>6</sup>

5. Dixon qualified as a habitual offender pursuant to the sentence provisions of 11 *Del.C.* §4214(c). In the 71-count indictment, Dixon was facing a number of Robbery First Degree charges and firearms charges. As a habitual offender, Dixon was facing a minimum/mandatory twenty-five year prison sentence for every conviction on every Robbery First Degree charge, every Possession of a Firearm

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<sup>4</sup> See, Affidavit of Probable Cause attached as Exhibit B to Justice of Peace Court No. 11 Commitment filed in the Superior Court on March 28, 2017.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

During the Commission of a Felony (“PFDCF”) charge, and every Possession of a Firearm by a Person Prohibited charge (“PFBPP”) in the indictment. Dixon was facing over 30 of these charges, and if convicted, Dixon was facing hundreds of years of minimum/mandatory incarceration. Dixon was facing a virtual life sentence if convicted at trial.

6. On September 28, 2017, Dixon entered into a guilty plea to four charges: one count of PFDCF, two counts of Robbery Second Degree (lesser-included offense of Robbery First Degree) and one count of Conspiracy Second Degree. Additionally, Dixon admitted his violation of probation in Criminal Action No. 1102012438. All the remaining charges of the indictment were dismissed as part of the plea.<sup>7</sup>

7. As part of the plea agreement, Dixon agreed that he would be sentenced as a habitual offender on the PFDCF charge, and would be subjected to a 25-year minimum/mandatory sentence as a habitual offender on that charge. The State agreed to recommend the 25-year minimum/mandatory prison sentence on the PFDCF charge and agreed to seek suspended jail sentences on all the other charges comprising the plea agreement. The State agreed to recommend a total of 37 years

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<sup>7</sup> See, In Criminal ID No. 1703012089: Superior Court Docket No. 14-Plea Agreement filed September 28, 2017.

at Level V incarceration, suspended after serving the 25-year minimum/mandatory sentence, following by decreasing levels of quasi-incarceration and probation.<sup>8</sup>

8. On February 16, 2018, following a pre-sentence investigation, the Superior Court accepted the agreed upon sentence recommendation and sentenced Dixon as a habitual offender to a total of twenty-five years of unsuspended Level V time, the minimum/mandatory sentence for PFDCF as a habitual offender, followed by decreasing levels of quasi-incarceration and probation.<sup>9</sup>

9. Dixon did not file a direct appeal of his conviction or sentence.

10. On March 20, 2018, Dixon filed a motion for sentence reduction/modification, which was denied by the Superior Court by Order dated April 2, 2018.<sup>10</sup>

11. On October 22, 2018, Dixon filed a motion to withdraw his guilty plea pursuant to Superior Court Criminal Rule 32(d), which was denied by the Superior Court by Order dated January 2, 2019.<sup>11</sup>

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<sup>8</sup> See, In Criminal ID No. 1703012089: Superior Court Docket No. 14-Plea Agreement filed September 28, 2017.

<sup>9</sup> February 16, 2018 Sentencing Hearing at pgs. 23-27; Sentencing Order- Superior Court Docket Nos. 19 and 21 in Criminal ID No. 1703012089.

<sup>10</sup> In Criminal ID No. 1703012089- Superior Court Docket Nos. 22 (Motion) and 23 (Order denying motion).

<sup>11</sup> In Criminal ID No. 1703012089- Superior Court Docket Nos. 24 (Motion) and 25 (Order denying motion).

## DIXON'S RULE 61 MOTION

12. Dixon filed the subject Rule 61 motion on February 7, 2019. In the subject motion, Dixon raises three claims: 1) defense counsel failed to investigate his case; 2) defense counsel was ineffective for failing to file a motion to suppress evidence obtained from the GPS tracker on his vehicle; and 3) the plea agreement did not clearly state that Dixon would be sentenced as a habitual offender.

13. Dixon also filed a motion for the appointment of counsel. By Order dated March 5, 2019, Dixon's motion for the appointment of counsel was denied.<sup>12</sup>

14. In the subject action, Dixon had initially been represented by David C. Skoranski, Esquire, and when he left the Office of the Public Defender, Raymond D. Armstrong, Esquire replaced Mr. Skoranski as Dixon's defense counsel.

15. In this Rule 61 motion, the record was enlarged and both Mr. Skoranski and Mr. Armstrong were directed to submit Affidavits responding to Dixon's ineffective assistance of counsel claims. Thereafter, the State filed a response to the motion and Dixon filed a reply thereto.<sup>13</sup>

16. After briefing was completed, this motion was referred to the undersigned Commissioner to assist in the resolution of this motion.<sup>14</sup>

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<sup>12</sup> In Criminal ID No. 1703012089- See, Superior Court Docket Nos. 27 (Motion) and 30 (Order denying motion).

<sup>13</sup> Super.Ct.Crim.R. 61(f) and 61(g).

<sup>14</sup> In Criminal ID No. 1703012089- See, Superior Court Docket No. 36.

17. For the reasons set forth below, Dixon's Rule 61 motion should be denied.

**Dixon's Claim of Lack of Knowledge About Habitual Offender Status**

18. Turning first to Dixon's claim that he was not aware he would be sentenced as a habitual offender on the PFDCF charge, this claim is simply untrue. The record is replete with Dixon's knowledge and consent that the State was going to seek habitual offender status on the PFDCF charge, that Dixon knew he qualified for habitual status, and that Dixon knew the State would be recommending the minimum/mandatory sentence of twenty-five years at Level V incarceration as a result thereof.

19. The plea agreement, itself, clearly stated that Dixon would be sentenced as a habitual offender. The plea agreement stated: "**Sentence Terms:** . . . Count 2-the State will seek to declare the defendant as a habitual offender pursuant to 11 Del.C. Sec. 4214(c) and (d). The State will recommend 25 years at Level 5 (minimum mandatory if declared a habitual offender)."<sup>15</sup>

20. The plea agreement expressly provided: "STATE AND DEFENDANT AGREE TO THE FOLLOWING: The defendant agrees he is a Habitual Offender

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<sup>15</sup> In Criminal ID No. 1703012089: Superior Court Docket No. 14-Plea Agreement filed September 28, 2017.

and therefore subject to sentencing pursuant to 11 Del.C. . . §4214(c) and §4214(d) due to the following prior convictions. . .”<sup>16</sup>

21. During the plea colloquy, the State represented to the Superior Court that the terms of the plea agreement provided that “[a]s to Count II, the State will declare the defendant as an habitual offender pursuant to 11 Delaware Code, Section 4214(c) & (d). . .”<sup>17</sup> The State further represented that the terms of the plea agreement provided that “Defendant agrees that he is an habitual offender, and is, therefore subject to the sentencing provisions of 11 Delaware Code, Section 4214(c) and (d), due to the following prior convictions. . .”<sup>18</sup>

22. During the plea colloquy, the Superior Court reiterated that the plea agreement expressly provided that the State was going to recommend at sentencing on the PFDCF charge that Dixon be declared a habitual offender and sentenced to 25 years at Level V, the minimum mandatory sentence for a habitual offender.<sup>19</sup> The Superior Court also reiterated that as part of the plea agreement Dixon must agree that he is a habitual offender and subject to sentencing under 11 Delaware Code, Section 4214(c) and (d).<sup>20</sup>

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<sup>16</sup> In Criminal ID No. 1703012089: Superior Court Docket No. 14-Plea Agreement filed September 28, 2017.

<sup>17</sup> September 28, 2017 Plea Transcript, at pg. 3.

<sup>18</sup> September 28, 2017 Plea Transcript, at pg. 3.

<sup>19</sup> September 28, 2017 Plea Transcript, at pg. 7.

<sup>20</sup> September 28, 2017 Plea Transcript, at pg. 8.



23. At the plea colloquy, the Superior Court asked Dixon if that was his understanding of the plea agreement, to which Dixon responded: “Yes.”<sup>21</sup>

24. Later, during the plea colloquy, the Superior Court advised Dixon: “the State has said that they’re going to seek to have you declared a habitual offender on [the PFDCF] charge. You understand that?” Dixon responded: “Yes.”<sup>22</sup>

25. At sentencing, the Superior Court stated to Dixon: “If I recall correctly, during your plea agreement you admitted that, in fact, you are a habitual criminal offender. Correct?” To which Dixon responded: “Yes.”<sup>23</sup> Dixon also represented that he had no basis to object to the habitual offender petition.<sup>24</sup>

26. The record reflects that the plea agreement clearly indicated that Dixon was to be declared and sentenced as a habitual offender on the PFDCF charge, that Dixon knew the State would be declaring him a habitual offender, that Dixon knew he qualified as a habitual offender, and that Dixon knew that he was facing a minimum/mandatory 25-year prison sentence as a habitual offender.

27. Dixon’s claim that he was unaware he would be sentenced as a habitual offender is directly at odds with the record and is wholly without merit.

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<sup>21</sup> September 28, 2017 Plea Transcript, at pg. 9.

<sup>22</sup> September 28, 2017 Plea Transcript, at pg. 11.

<sup>23</sup> February 16, 2018 Sentencing Hearing, at pg. 8.

<sup>24</sup> February 16, 2018 Sentencing Hearing, at pgs. 8-9.

### Dixon's Ineffective Assistance of Counsel Claims

28. Turning to Dixon's remaining two claims, that his counsel was ineffective for failing to investigate his case and that his counsel was ineffective for failing to file a motion to suppress evidence obtained from the GPS tracker on his vehicle, Dixon waived these claims upon the entry of his guilty plea, and they are also without merit.

29. It is important to emphasize at the outset that both counsel submitted Affidavits responding to Dixon's ineffective assistance of counsel claims and both advised that they did investigate the case and determined that there were no witnesses that would be helpful to Dixon's case nor any evidence that would exonerate him.<sup>25</sup> Both attorneys considered a possible suppression motion and determined that there was no meritorious basis to pursue any such motion. Both attorneys believed that the evidence against Dixon was overwhelming, that he had no valid defense, and that he was facing a virtual life sentence if convicted at trial.<sup>26</sup> In both attorneys' assessments of the case, the best course of defense was to try to negotiate the best global plea possible.<sup>27</sup>

30. Dixon waived his ineffective assistance of counsel claims raised herein upon the entry of his plea.

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<sup>25</sup> In Criminal ID No. 1703012089: Superior Court Docket No. 32- Affidavit of David C. Skoranski in response to Dixon's Rule 61 motion; Superior Court Docket No. 31- Affidavit of Raymond D. Armstrong in response to Dixon's Rule 61 motion.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

31. A defendant is bound by his answers on the plea form and by his testimony at the plea colloquy in the absence of clear and convincing evidence to the contrary.<sup>28</sup> In the subject action, the Truth-in-Sentencing Guilty Plea Form, Plea Agreement and plea colloquy reveal that Dixon knowingly, voluntarily and intelligently entered a guilty plea to the charges for which he pled guilty and was sentenced.

32. At the time of the plea, Dixon personally represented that he had reviewed the plea agreement with counsel and with the court and reviewed the Truth-in-Sentencing Guilty Plea Form with counsel, and that he understood everything.<sup>29</sup> Dixon represented that nobody was forcing him to enter his plea.<sup>30</sup> Dixon represented that he was freely and voluntarily pleading guilty to the charges comprising the plea agreement.<sup>31</sup> Dixon represented that he was not being threatened or forced to do so by his attorney, by the State, or by anyone else.<sup>32</sup>

33. During the plea colloquy and in the Truth-in-Sentencing Guilty Plea Form, Dixon represented that he understood he was waiving all of his constitutional rights

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<sup>28</sup> *Evans v. State*, 2016 WL 6196456 (Del.); *State v. Harden*, 1998 WL 735879, \*5 (Del.Super.); *State v. Stuart*, 2008 WL 4868658, \*3 (Del.Super.).

<sup>29</sup> September 28, 2017 Plea Transcript, at pg. 14.

<sup>30</sup> September 28, 2017 Plea Transcript, at pg. 9.

<sup>31</sup> September 28, 2017 Plea Transcript, at pg. 9.

<sup>32</sup> September 28, 2017 Plea Transcript, at pg. 9; Truth-in-Sentencing Guilty Plea Form dated September 28, 2017.

associated with taking a plea, including the right to challenge the State's witnesses, the State's evidence, and the right to raise any defenses thereto.<sup>33</sup>

34. Dixon further represented that he was satisfied with his counsel's representation, that his counsel fully advised him of his rights, that he was voluntarily entering into his guilty plea, that he was guilty of each of the charges for which he was pleading guilty, and that he understood the trial and appellate rights he was waiving by entering into the plea agreement.<sup>34</sup> Only after finding that Dixon's plea was entered into knowingly, intelligently and voluntarily, did the court accept Dixon's plea.<sup>35</sup>

35. Since Dixon's plea was entered into voluntarily, intelligently and knowingly, Dixon waived his right to challenge any alleged errors, deficiencies or defects occurring prior to the entry of his plea, even those of constitutional proportions.<sup>36</sup>

36. Dixon's claims presented herein, that his counsel was ineffective for failing to investigate his case and ineffective for failing to file a suppression motion, were waived when Dixon voluntarily entered into his guilty plea.<sup>37</sup>

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<sup>33</sup> September 28, 2017 Plea Transcript, at pgs. 9-10; Truth-in-Sentencing Guilty Plea Form dated September 28, 2017.

<sup>34</sup> September 28, 2017 Plea Transcript, at pgs. 9-14; Truth-in-Sentencing Guilty Plea Form dated September 28, 2017.

<sup>35</sup> September 28, 2017 Plea Transcript, at pgs. 17-18.

<sup>36</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Modjica v. State*, 2009 WL 2426675 (Del. 2009); *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2004).

<sup>37</sup> See, *Mills v. State*, 2016 WL 97494, at \*3 (Del.); *Day v. State*, 2011 WL 3617797 (Del.) (claim that counsel was ineffective for failing to file a suppression motion was waived when

37. In addition to Dixon's ineffective assistance of counsel claims having been waived, they are also without merit.

38. In order to prevail on an ineffective assistance of counsel claim, the defendant must meet the two-pronged *Strickland* test by showing that: (1) counsel performed at a level "below an objective standard of reasonableness" and that, (2) the deficient performance prejudiced the defense.<sup>38</sup> The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires him to show that there is a reasonable probability that, but for defense counsel's unprofessional errors, the outcome of the proceedings would have been different.<sup>39</sup>

39. In the context of a plea challenge, it is not sufficient for the defendant to simply claim that his counsel was deficient. The defendant must also establish that counsel's actions were so prejudicial that there was a reasonable probability that, but for counsel's deficiencies, the defendant would not have taken a plea but would have insisted on going to trial.<sup>40</sup> Mere allegations of ineffectiveness will not suffice;

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defendant voluntarily entered his guilty plea, since voluntary guilty plea waives any claims of error occurring prior to the entry of the plea); *Hickman v. State*, 1994 WL 590495 (Del.).

<sup>38</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

<sup>39</sup> *Id.* at 687-88, 694.

<sup>40</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997); *Premo v. Moore*, 131 S.Ct. 733, 739-744 (2011).

instead, a defendant must make and substantiate concrete allegations of actual prejudice.<sup>41</sup>

40. The United States Supreme Court has reiterated the high bar that must be surmounted to prevail on an ineffective assistance of counsel claim.<sup>42</sup> The United States Supreme Court cautioned that in reviewing ineffective assistance of counsel claims in the context of a plea bargain, the court must be mindful of the fact that “[p]lea bargains are the result of complex negotiations suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks.”<sup>43</sup>

41. An ineffective assistance of counsel claim based on the failure to object to evidence is without merit if trial counsel lacked a legal or factual basis to object to the evidence.<sup>44</sup>

42. In the subject action, both attorneys did investigate the case and both determined that there were no witnesses that would be helpful to Dixon’s case nor any evidence that would exonerate him.<sup>45</sup> Indeed, as emphasized by Mr. Armstrong, Dixon was arrested immediately following one of the robberies with the victims’

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<sup>41</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

<sup>42</sup> *Premo v. Moore*, 131 S.Ct. 733, 739-744 (2011).

<sup>43</sup> *Id.*, at pg. 741.

<sup>44</sup> *State v. Exum*, 2002 WL 100576, at \*2 (Del.Super.), *affirmed*, 2002 WL 2017230, at \*1 (Del.).

<sup>45</sup> In Criminal ID No. 1703012089: Superior Court Docket No. 32- Affidavit of David C. Skoranski in response to Dixon’s Rule 61 motion; Superior Court Docket No. 31- Affidavit of Raymond D. Armstrong in response to Dixon’s Rule 61 motion.

properties and identifications in his car.<sup>46</sup> Both attorneys also considered the possibility of filing a suppression motion and both determined that there was no meritorious basis to do so.<sup>47</sup>

43. As to the suppression motion, the Affidavit of Probable Cause which gave rise to the installation of the GPS tracker was based on the actual observations of the police officer.<sup>48</sup> The police officer had been tracking a victim's cell phone stolen in one of the robberies, the video surveillance taken from the Concord Mall showed Dixon selling the victim's cell phone, and the police observed Dixon driving a vehicle that matched the description of the vehicle identified in several of the robberies. The warrant application that led to the installation of the GPS tracker provided adequate probable cause for installation of the GPS tracker.<sup>49</sup> There was no basis to support the filing of a motion to suppress.

44. Trial counsel cannot be deemed ineffective for failing to file a motion to suppress when there was no basis to support such a motion. Conclusory, unsupported

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<sup>46</sup> In Criminal ID No. 1703012089: Superior Court Docket No. 31- Affidavit of Raymond D. Armstrong in response to Dixon's Rule 61 motion, at pg. 3.

<sup>47</sup> In Criminal ID No. 1703012089: Superior Court Docket No. 32- Affidavit of David C. Skoranski in response to Dixon's Rule 61 motion; Superior Court Docket No. 31- Affidavit of Raymond D. Armstrong in response to Dixon's Rule 61 motion.

<sup>48</sup> In Criminal ID No. 1703012089: Superior Court Docket No. 34- State's Response to Dixon's Rule 61 motion at Exhibit 1, Affidavit in Support of a Mobile Tracking Device Warrant.

<sup>49</sup> *Id.*

and unsubstantiated allegations are insufficient to establish a claim of ineffective assistance of counsel.<sup>50</sup>

45. Dixon's plea represented a rational choice given the pending charges, the evidence against him, and the possible sentences he was facing if convicted at trial. The evidence against Dixon was overwhelming, he had no valid defense, and he was facing a virtual life sentence if convicted at trial. Dixon received a significant benefit by pleading guilty. By entering into the plea, Dixon was sentenced to a twenty-five year minimum-mandatory sentence of unsuspended prison time.

46. Dixon has not established that his counsel was deficient in any respect or that he has suffered any actual prejudice therefrom. His ineffective assistance of counsel claims must fail.

47. Dixon's ineffective assistance of counsel claims for failing to investigate his case and for failing to file a suppression motion were waived when Dixon voluntarily entered into his guilty plea. These claims are also without merit.

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<sup>50</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990); *State v. Brown*, 2004 WL 74506, \*2 (Del.Super. 2004) (conclusory and unsubstantiated allegations of unprofessional conduct are insufficient to support a motion for postconviction relief).



For all of the foregoing reasons, Dixon's Motion for Postconviction Relief should be DENIED.

**IT IS SO RECOMMENDED.**



Commissioner Lynne M. Parker

cc: Prothonotary  
Raymond D. Armstrong, Esquire  
David C. Skoranski, Esquire