

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

|                    |   |                       |
|--------------------|---|-----------------------|
| STATE OF DELAWARE, | ) |                       |
|                    | ) |                       |
| Plaintiff,         | ) |                       |
|                    | ) |                       |
| v.                 | ) | Cr. ID No. 2312011530 |
|                    | ) |                       |
| NASIR SIMMONS,     | ) |                       |
|                    | ) |                       |
| Defendant.         | ) |                       |

Submitted: June 2, 2025  
Decided: August 20, 2025

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

William L. Rasis, Deputy Attorney General, Department of Justice, Wilmington,  
Delaware, Attorney for the State.

Nasir Simmons, H.R.Y.C.I., Wilmington, Delaware, *pro se*.

PARKER, Commissioner

This 20th day of August 2025, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

**BACKGROUND, FACTS AND PROCEDURAL HISTORY**

1. Defendant Nasir Simmons was arrested on January 12, 2024, and indicted on February 12, 2024, for the events that occurred on December 28, 2023.

2. On December 28, 2023, Simmons was driving on Interstate 495 when the victim's vehicle damaged the rearview mirror of his car. Simmons attempted to chase the victim in the hopes that the victim would stop to exchange insurance information. When the victim refused to stop, Simmons became enraged and fired four shots into the victim's vehicle, including two that hit the rear door panel. Both vehicles were traveling at a high rate of speed and infants were in both of the cars. After firing into the victim's vehicle, Simmons sped off. The victim's dash camera captured the entire incident, including the license plate of Simmons' vehicle.<sup>1</sup> During a post-Miranda interview, Simmons confessed to shooting his gun at the victim.<sup>2</sup>

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<sup>1</sup> Plea and Sentencing Transcript dated June 26, 2024, at pg. 11; Affidavit of Probable Cause attached as Exhibit B to Justice of Peace Court No. 2 Commitment filed in the Superior Court on January 22, 2024.

<sup>2</sup> Affidavit of Probable Cause attached as Exhibit B to Justice of Peace Court No. 2 Commitment filed in the Superior Court on January 22, 2024.

3. On February 12, 2024, Simmons was indicted on the charges of Attempted Assault First Degree, Reckless Endangering First Degree, and two counts of Possession of a Firearm During the Commission of a Felony (“PFDCF”).

4. Defense Counsel obtained a Mitigation Report and submitted it to the State. Based on the Mitigation Report which highlighted the fact that Simmons had no prior criminal record and emphasized other positive things, the State offered Simmons a favorable plea.<sup>3</sup>

5. On June 26, 2024, Simmons pled guilty to Attempted Assault First Degree, Reckless Endangering First Degree, and one count of PFDCF. The State agreed to recommend an unsuspended prison sentence of five years, which was the minimum mandatory sentence for the charges for which he pled guilty. Specifically, the minimum mandatory sentence for the conviction of one count of PFDCF was three years of unsuspended prison time. The minimum mandatory sentence for the conviction of Attempted Assault First Degree was two years of unsuspended prison time.<sup>4</sup>

6. As part of the plea, the State agreed to dismiss the second count of PFDCF, which also carried an additional three-year minimum mandatory prison sentence.<sup>5</sup>

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<sup>3</sup> Plea and Sentencing Transcript dated June 26, 2024, at pgs. 11-12; D.I. 25- Affidavit of Defense Counsel in response to Rule 61 motion, Mitigation Report dated May 13, 2024 attached as Exhibit A.

<sup>4</sup> D.I. 13- Plea Agreement.

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

7. After entering the plea, the Court immediately sentenced Simmons. The Court followed the State's sentence recommendation and sentenced Simmons to the five-year minimum mandatory unsuspended prison sentence followed by probation.

8. Simmons did not file a direct appeal.

9. On August 27, 2024, Simmons filed a motion for sentence modification,<sup>6</sup> which was denied by the Superior Court by Order dated November 13, 2024.<sup>7</sup>

### **SIMMONS' RULE 61 MOTION**

10. Simmons filed the subject Rule 61 motion on January 17, 2025. In the subject motion, Simmons raises three claims for relief. First, he claims his counsel was ineffective for failing to file a motion to dismiss when the State failed to indict him within 45 days of his arrest. Second, he claims his counsel was ineffective for failing to inform him that he could have received a lesser sentence if he proceeded to trial. Third, he claims that his counsel was ineffective for failing to advocate or create a mitigation report for consideration by the State.

11. In this Rule 61 motion, the record was enlarged and Simmons' trial counsel was directed to submit an Affidavit responding to the ineffective assistance of counsel claims. Thereafter, the State filed a response to the motion and Simmons was permitted to file a reply thereto.<sup>8</sup>

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<sup>6</sup> D.I. 15 -Motion for Sentence Modification.

<sup>7</sup> D.I. 16- November 13, 2024 Order denying Sentence Modification.

<sup>8</sup> Super.Ct.Crim.R. 61(f) and 61(g).

12. Each of Simmons' claims will be addressed in turn.

**Claim One: Alleged Ineffectiveness for Failing to File Motion to Dismiss**

13. In Claim One, Simmons claims that his counsel was ineffective for failing to file a motion to dismiss when the State failed to indict him within 45 days of his arrest pursuant to Superior Court Criminal Rule 48(b).

14. 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>9</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>10</sup>

15. Turning to the subject matter, Simmons claims that his counsel was ineffective for failing to file a motion the dismiss because he was not indicted within 45 days of his arrest. Simmons is incorrect in this regard. The incident at issue occurred on December 28, 2023, Simmons was arrested on January 12, 2024,<sup>11</sup> and indicted on February 12, 2024.<sup>12</sup>

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<sup>9</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

<sup>10</sup> *Id.* at 687-88, 694.

<sup>11</sup> See, Justice of Peace Court No. 2 Commitment filed in the Superior Court on January 22, 2024.

<sup>12</sup> D.I. 4- Indictment.

16. Simmons was indicted within 30 days of his arrest. In fact, not only was Simmons indicted within 45 days of his arrest, but he was also indicted within 46 days of the date of the incident. The factual predicate for which this claim is based is incorrect. There is no merit to this claim.

17. For the sake of completeness, Superior Court Criminal Rule 48(b) provides: “If there is unnecessary delay in presenting the charge to a grand jury. . . the court may dismiss the indictment. . . .”<sup>13</sup> Rule 48(b) does not specify or define the term “unnecessary delay”, and it certainly does not incorporate a specific time period.<sup>14</sup>

18. A Superior Court Criminal Administrative Order issued on January 16, 1991 stated that when a case is pending indictment for more than 45 days after arrest, the Court may consider imposing sanctions.<sup>15</sup> This 45-day period was never incorporated into Rule 48(b) and is to be considered only as a guideline.<sup>16</sup>

19. For instance, in *Lum v. State*,<sup>17</sup> the Delaware Supreme Court held that the four-month delay between arrest and indictment did not create a basis to dismiss the indictment, pursuant to Rule 48(b), when the defendant did not establish prejudice and there was no unnecessary delay.<sup>18</sup> See also, *State v. Moore*<sup>19</sup>, in which the Court

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<sup>13</sup> See, Del.Super.Crim.R. 48(b).

<sup>14</sup> *State v. Moore*, 2024 WL 2292230, \*3-4 (Del.Super.)

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Lum v. State*, 2017 WL 2665057, \*2 (Del.).

<sup>18</sup> *Id.*

<sup>19</sup> *State v. Moore*, 2024 WL 2292230, \*3-4 (Del.Super.)

noted that when the delay between arrest and indictment was 91 days, only 46 days beyond the 45-day guideline, and there was no evidence of any egregious misconduct by the State, and the defendant did not establish actual prejudice, there was no basis for the dismissal of the indictment.<sup>20</sup>

20. As previously discussed, in this case, Simmons was indicted within 30 days of his arrest, and within 46 days of the events which led to the criminal charges. Here, there was absolutely no delay from arrest to indictment, let alone unreasonable delay attributable to the State. There was no factual basis for a motion to dismiss and counsel cannot be deemed ineffective for not filing a motion with lacked any factual or legal basis.<sup>21</sup>

21. Moreover, Simmons waived this claim at the time he entered into his guilty plea. A voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea. By accepting the plea, Myers waived his right to challenge the timeliness of the indictment.<sup>22</sup>

22. This claim is without merit and was waived at the time of the plea.

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<sup>20</sup> *Id.*

<sup>21</sup> See, *State v. Exum*, 2002 WL 100576, \*2 (Del.Super.), *aff'd*, 2002 WL 2017230, \*1 (Del.).

<sup>22</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); *Evans v. State*, 2025 WL 1565409 (Del.).

## **Claim Two: Counsel Ineffectiveness for Alleged Misinformation**

23. Simmons' second claim is that his counsel was ineffective for failing to inform him that he could have received a lesser sentence if he proceeded to trial.

24. This factual premise is simply incorrect. Simmons could not have received a lesser sentence if he proceeded to trial and was convicted of all the charges.

25. As a result of the plea, the State dismissed the second count of PFDCF which, like the first count, also carried a three-year minimum mandatory sentence.

26. If Simmons had not accepted the plea, and proceeded to trial, he was facing an eight-year minimum mandatory prison sentence if convicted of all the charges rather than the plea offer of a five-year minimum mandatory prison sentence.

27. The evidence against Simmons in this case was overwhelming. Simmons had confessed to the shooting and the incident (both audio and video) was captured on dashcam. If Simmons proceeded to trial, he would have in all likelihood been convicted of all the charges and would be serving a sentence of at least a minimum of 8 years of unsuspended prison time rather than the 5-year prison sentence he is serving by taking the plea.

28. Undoubtedly, Simmons' decision to accept the plea was the prudent course of proceeding and defense counsel cannot be deemed deficient or ineffective in any respect in counseling Simmons to accept the plea in light of the overwhelming evidence against him.



29. Moreover, at the time Simmons accepted the plea, he represented to the Court that he conferred with counsel and understood the terms of the plea agreement, understood the rights he was giving up, that his plea was not coerced in any way, and that he alone was making the decision to accept the plea.<sup>23</sup>

30. This claim is without merit.

**Claim Three: Ineffectiveness for Failing to File a Mitigation Report**

31. Simmons' third claim is that his counsel was ineffective for failing to advocate or create a mitigation report for consideration by the State.

32. This is simply incorrect.

33. Defense counsel did submit a mitigation report to the State for its consideration, and the State offered Simmons a favorable plea only after reviewing the mitigation submitted by defense counsel.<sup>24</sup> Indeed, the mitigation report was addressed at sentencing.<sup>25</sup> At sentencing, defense counsel advised the Court that he had obtained a mitigation report and submitted it to the State highlighting the fact that Simmons did not have a prior criminal record, and emphasizing other positive things, and that based on the mitigation report, the State offered the favorable plea.<sup>26</sup>

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<sup>23</sup> Truth-in-Sentencing Guilty Plea Form dated June 25, 2024; June 26, 2024 Plea Transcript, at pgs. 6-9.

<sup>24</sup> D.I. 25- Affidavit of Defense Counsel in response to Rule 61 motion, Mitigation Report dated May 13, 2024 attached as Exhibit A; D.I. 26-State's Response to Rule 61 Motion; June 26, 2024 Plea Transcript, at pg. 11.

<sup>25</sup> June 26, 2024 Plea Transcript, at pg. 11.

<sup>26</sup> June 26, 2024 Plea Transcript, at pg. 11.

34. Simmons has failed to make any concrete allegations of deficient conduct, let alone, deficient conduct that resulted in actual prejudice. Simmons' unsubstantiated ineffective assistance of counsel claims are without merit.

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

**IT IS SO RECOMMENDED.**

/s/ Lynne M. Parker  
Commissioner Lynne M. Parker

cc: Prothonotary  
Raymond D. Armstrong, Esquire