

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,	)	
	)	
v.	)	ID: 0804008973
	)	
DAWANN R. DIXON,	)	
a/k/a ABDUL MUID DIXON,	)	
	)	
Defendant.	)	

**ORDER**

**Upon Defendant’s Second Motion for Postconviction Relief –  
*SUMMARILY DISMISSED;*  
Upon Defendant’s Motion for Appointment of Counsel –  
*DENIED.***

1. On February 5, 2009, a jury convicted Defendant of assault in the first degree and related offenses. Defendant was sentenced to ten years in prison followed by probation. He filed a direct appeal, and his conviction was affirmed on May 20, 2010. The mandate was filed on June 8, 2010.<sup>1</sup>

2. Defendant filed his first motion for post-conviction relief on April 29, 2011. The motion was summarily dismissed on September 30, 2011.<sup>2</sup> The

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<sup>1</sup> *Dixon v. State*, 996 A.2d 1271 (Del. 2010).

<sup>2</sup> *State v. Dixon*, 2011 WL 7646202 (Del. Super. Sept. 30, 2011) *aff'd*, 41 A.3d 429 (Del. 2012).

dismissal was affirmed and the mandate filed on April 4, 2012.<sup>3</sup>

3. Defendant filed this, his second motion for postconviction relief, on September 3, 2013. Simultaneously, he filed a motion for appointment of counsel.

4. The second motion for postconviction relief includes three grounds, all relating to allegedly erroneous evidentiary rulings made at Defendant's trial, or the like. Now, Defendant couches those rulings as due process violations.

5. The second motion for postconviction relief was properly referred,<sup>4</sup> and upon preliminary review it appears subject to summary dismissal.<sup>5</sup>

6. The second motion for postconviction relief is untimely.<sup>6</sup> It also is procedurally barred because Defendant's latest claims should have been raised on direct appeal or in the first motion for postconviction relief. To some extent, the first and second motions for postconviction relief overlap. For example, in both motions Defendant challenges the admissibility of a "911" call. Accordingly, it can be said those claims are formerly adjudicated.<sup>7</sup>

7. Defendant has not attempted to show cause for his procedural default and prejudice.<sup>8</sup> Moreover, the court is satisfied that further review is not

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<sup>3</sup> *Dixon v. State*, 41 A.3d 429 (Del. 2012).

<sup>4</sup> Super. Ct. Crim. R. 61(d)(1).

<sup>5</sup> Super. Ct. Crim. R. 61(d)(4).

<sup>6</sup> Super. Ct. Crim. R. 61(i)(1).

<sup>7</sup> Super. Ct. Crim. R. 61(i)(4).

<sup>8</sup> Super. Ct. Crim. R. 61(i)(3).

justify in the interest of justice or to address a colorable, constitutional claim.<sup>9</sup>

8. As to the motion for appointment of counsel, the recently revised Superior Court Criminal Rule 61(e)(1) does not apply here. As mentioned above, all proceedings concerning Defendant's first motion for postconviction relief ended conclusively on April 4, 2012 and the revised Rule 61 only applies to postconviction relief proceedings instituted on or before May 6, 2013.<sup>10</sup> Otherwise, Defendant does not have a right to appointment of counsel upon demand for a postconviction relief proceeding.

For the foregoing reasons, Defendant's second motion for post-conviction relief is **SUMMARILY DISMISSED**. Defendant's first motion for appointment of counsel is **DENIED**.

**IT IS SO ORDERED.**

Date: December 5, 2013

/s/ Fred S. Silverman

Judge

oc: Prothonotary (Criminal)  
pc: Joseph S. Grubb, Deputy Attorney General  
Abigail Layton, Deputy Attorney General  
Dawann Dixon, Defendant

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<sup>9</sup> Super. Ct. Crim. R. 61(i)(5).

<sup>10</sup> *Roten v. State*, 2013 WL 5808236 (Del. Supr.).