

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMIE DIXON,	§
	§ No. 550, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0609002845
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 3, 2008
Decided: February 7, 2008

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 7th day of February 2008, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Jamie Dixon, filed an appeal from the Superior Court’s September 14, 2007 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In April 2007, Dixon pleaded guilty to Rape in the First Degree, Robbery in the First Degree, and Assault in the Second Degree in connection with the robbery of a convenience store and the rape of its 72 year-old night shift clerk. In May 2007, Dixon was sentenced to life in prison on the rape conviction, to 5 years at Level V on the robbery conviction, and, as a habitual offender, to 8 years at Level V on the assault conviction.² Because Dixon was serving a probationary sentence in connection with a previous robbery at the time he committed those crimes, he also received 10 years at Level V for violating his probation. Dixon did not file a direct appeal from his convictions and sentences.

(3) In this appeal from the denial of his postconviction motion, Dixon claims that a) the Superior Court abused its discretion by ruling on his postconviction motion without an evidentiary hearing; b) it was improper for one judge to accept his plea and another judge to impose sentence; c) his

¹ Supr. Ct. R. 25(a).

² The record reflects that the order declaring Dixon a habitual offender erroneously states that Dixon was declared a habitual offender in connection with his rape conviction. The remainder of the documents relating to Dixon's sentencing, including the TIS form, the plea agreement, the habitual offender motion, the sentencing transcript, and the sentencing order, correctly reflect that he was declared a habitual offender in connection with his assault conviction.

sentence as a habitual offender is improper because he was not given prior notice or an opportunity for rehabilitation; and d) his counsel provided ineffective assistance by failing to inform him that he could be sentenced to more Level V time than had been agreed upon.

(4) Dixon's first claim is that the Superior Court abused its discretion by ruling on his postconviction motion without an evidentiary hearing. It is for the Superior Court to determine in its discretion whether to schedule an evidentiary hearing in connection with a postconviction motion.³ The record in this case supports the Superior Court's decision not to schedule an evidentiary hearing on Dixon's motion. The claims were straightforward and there was no need for supplementation of the paper record. In the absence of an abuse of discretion on the part of the Superior Court, we conclude that Dixon's first claim is without merit.

(5) Dixon's second claim is that it was improper for one judge to accept his plea and another to impose sentence. Because Dixon failed to raise this claim on direct appeal, it is procedurally defaulted⁴ unless he can demonstrate cause and prejudice⁵ or a colorable claim of a miscarriage of

³ Super. Ct. Crim. R. 61(h) (1) and (3).

⁴ Super. Ct. Crim. R. 61(i) (3).

⁵ Super. Ct. Crim. R. 61(i) (3) (A) and (B).

justice due to a constitutional violation.⁶ Dixon has cited to no legal authority in support of his claim. Nor has he demonstrated any prejudice or a violation of his constitutional rights. In the absence of any such evidence, we conclude that Dixon's second claim is without merit.

(6) Dixon's third claim is that he was improperly sentenced as a habitual offender because he was not given notice that he was eligible for habitual offender status or given an opportunity for rehabilitation. Again, because Dixon failed to raise this claim on direct appeal, it is procedurally defaulted⁷ unless he can demonstrate cause and prejudice⁸ or a colorable claim of a miscarriage of justice due to a constitutional violation.⁹ Again, Dixon has made no showing of prejudice in connection with this claim, nor has he demonstrated any constitutional violation. The record reflects that the State carried its burden of demonstrating that Dixon met the requirements for habitual offender status,¹⁰ including that he had been afforded the requisite opportunity for rehabilitation.¹¹

(7) Dixon's fourth, and final, claim is that his counsel provided ineffective assistance by failing to inform him that he could be sentenced to

⁶ Super. Ct. Crim. R. 61(i) (5).

⁷ Super. Ct. Crim. R. 61(i) (3).

⁸ Super. Ct. Crim. R. 61(i) (3) (A) and (B).

⁹ Super. Ct. Crim. R. 61(i) (5).

¹⁰ Del. Code Ann. tit. 11, § 4214(a).

¹¹ *Eaddy v. State*, Del. Supr., No. 440, 1995, Walsh, J. (May 30, 1996).

a prison term in excess of what had been agreed upon. In order to prevail on his claim of ineffective assistance in connection with his guilty plea, Dixon must demonstrate that, but for his counsel's unprofessional errors, he would not have pleaded guilty, but would have insisted on proceeding to trial.¹² The burden is on Dixon to make concrete allegations of ineffective assistance and to substantiate those allegations.¹³ The transcript of Dixon's plea colloquy reflects that, prior to the hearing, his attorney had informed him that he could be sentenced to anything between 15 years and life on the rape conviction and, furthermore, that the State had filed a habitual offender motion. At the hearing, Dixon admitted to the three prior felony convictions supporting his habitual offender status. In the absence of any evidence that error on the part of his counsel resulted in prejudice to him, we conclude that Dixon's fourth, and final, claim is also without merit.

(8) It is manifest on the face of Dixon's opening brief that the appeal is without merit. The issues on appeal are clearly controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

¹² *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

¹³ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice