

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LLOYD DIXON,	§
	§
Defendant Below-	§ No. 336, 2000
Appellant,	§
	§
v.	§ Court Below–Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr.A. No. IN94-03-1590
Plaintiff Below-	§
Appellee.	§

Submitted: January 25, 2001

Decided: February 26, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 26th day of February 2001, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Lloyd Dixon, filed this appeal from an order of the Superior Court denying his second motion for postconviction relief.

We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Dixon claims that: i) his indictment for first degree burglary was unconstitutionally vague and prejudicial to his defense; and ii) the

Superior Court abused its discretion in summarily determining that his claims were procedurally barred.

(3) In 1994, a Superior Court jury found Dixon guilty of one count of first degree burglary and two counts of first degree robbery. He was given a life sentence at Level V as an habitual offender on the burglary conviction and was sentenced to an additional period of incarceration at Level V on the first degree robbery convictions. On direct appeal, this Court affirmed the burglary conviction, but reversed the robbery convictions.¹

¹*Dixon v. State*, Del. Supr., 673 A.2d 1220 (1996).

(4) When reviewing a motion under Rule 61, this Court must first determine that the motion satisfies the procedural requirements of the rule before addressing any substantive issues.² Rule 61(i) (1) prohibits claims that are filed more than three years after the judgment of conviction is final. In cases where the defendant takes a direct appeal, the three-year period begins to run once this Court issues its mandate in the matter.³ Because the mandate issued in Dixon's case on April 23, 1996, Dixon was required to file his motion for postconviction relief on or before April 23, 1999. His motion was filed on February 7, 2000 and is, therefore, untimely.⁴ Moreover, Dixon has failed to overcome the time bar by showing either that the Superior Court lacked jurisdiction or that there is a colorable claim of a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.⁵

²*Bailey v. State*, Del. Supr., 588 A.2d 1121, 1127 (1991).

³*Jackson v. State*, Del. Supr., 654 A.2d 829, 832-33 (1995).

⁴Super. Ct. Crim. R. 61(i) (1).

⁵Super. Ct. Crim. R. 61(i) (5). Dixon's claim of a defective indictment is also procedurally barred pursuant to Superior Court Criminal Rules 61(i) (2) and (3) because it was not asserted in his prior motion for postconviction relief or in the proceedings leading to the judgment of conviction and, furthermore, Dixon has shown no prejudice from a violation of his rights.

The Superior Court, thus, acted properly when it summarily determined that Dixon's claim was barred.⁶

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice

⁶Super. Ct. Crim. R. 61(h) (1) and (3).