

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALBERT WICKKISER,	§
	§
Defendant Below,	§ No. 605, 2013
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§
	§ Cr. ID 1007020085
Plaintiff Below,	§
Appellee.	§

Submitted: February 17, 2014

Decided: March 25, 2014

Before **BERGER, JACOBS, and RIDGELY**, Justices.

ORDER

This 25th day of March 2014, upon consideration of the appellant's opening brief, the State's motion to affirm, the parties' supplemental filings, and the record below including the supplemental transcript, it appears to the Court that:

(1) The defendant-appellant, Albert Wickkiser, filed this appeal from an October 14, 2013 Superior Court order denying his motion for correction of sentence. We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that in January 2011 Wickkiser pled guilty to one count each of Disregarding a Police Officer's Signal, Reckless Endangering in the Second Degree, and Driving during

Suspension/Revocation. As part of his plea agreement, Wickkiser agreed that he was eligible to be sentenced as an habitual offender. The transcript of Wickkiser's sentencing on June 3, 2011 reflects that Wickkiser agreed that his prior criminal record provided an adequate factual basis for the Superior Court to declare him to be an habitual offender. Wickkiser acknowledged that because Disregarding a Police Officer's Signal was a Title 21 felony, and not a Title 11 "violent" felony, he was *not* subject to a minimum mandatory term of incarceration but instead was subject to a non-mandatory sentencing range of two years to life imprisonment.¹

(3) On June 3, 2011, the Superior Court declared Wickkiser to be an habitual offender and sentenced him on the charge of Disregarding a Police Officer's Signal to four years at Level V incarceration. On his remaining charges, the Superior Court sentenced Wickkiser to a total period of one year and six months at Level V incarceration to be suspended entirely for decreasing levels of supervision. Wickkiser did not appeal to this Court. Instead, in August 2011, Wickkiser filed a motion for modification of sentence, which the Superior Court denied. Wickkiser did not appeal that decision. In September 2013, Wickkiser filed a motion for correction of

¹ 11 Del. C. § 4214(a) (2007).

illegal sentence. The Superior Court denied that motion on October 18, 2013. This appeal followed.

(4) Wickkiser's sole argument on appeal is that the Superior Court improperly declared him to be an habitual offender pursuant to 11 *Del. C.* § 4214(a) based on his conviction for a non-qualifying Title 21 felony. We find no merit to Wickkiser's claim.

(5) Section 4214(a) provides that any person who has been:

3 times convicted of a felony . . . under the laws of this, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony of this State is declared to be an habitual criminal, and the court in which such 4th or subsequent conviction is had, in imposing sentence, may in its discretion, impose a sentence of up to life imprisonment upon the person so convicted.²

The extent of the enhanced punishment imposed upon an habitual offender depends upon the number and gravity of the offender's prior crimes as well as the gravity of the crime for which the offender is being sentenced.³ Contrary to Wickkiser's argument on appeal, Section 4214(a) does not exclude Title 21 felonies as qualifying felonies.

(6) In this case, Wickkiser had the requisite number of qualifying felonies, which he openly admitted in the Superior Court. Wickkiser's

² *Id.*

³ *Forehand v. State*, 997 A.2d 673, 676 (Del. 2010).

subsequent guilty plea to another felony led the Superior Court to properly declare Wickkiser to be an habitual offender.⁴ Consequently, we find no error in the Superior Court's denial of Wickkiser's motion for correction of an illegal sentence.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁴ See *Jamison v. State*, 2008 WL 4166604 (Del. Sept. 10, 2008).