



4. On September 7, 2006, Defendant pled guilty to one count of Robbery in the First Degree and one count of Assault in the Second Degree.

5. On October 30, 2006, the State filed another Motion to Declare James Runyon an Habitual Offender. The State based its Motion on the following prior convictions: Escape After Conviction on April 16, 2002; Assault First Degree on October 16, 1996 (sentenced December 6, 1996); and Conspiracy Second Degree on April 6, 1994.

6. On November 17, 2006, the Court granted the State's October 30, 2006 Motion. The Court subsequently sentenced Defendant on all charges to which he had pled guilty. Defendant was sentenced as an habitual offender only on the Assault Second charge.

7. In his Motion for Correction of an Illegal Sentence, Defendant argues: "The Defendant's sentence as an habitual offender is illegal and in violation of his double jeopardy rights because the State was collaterally estopped from seeking his sentencing as a habitual offender on the Second Degree Assault charge."

8. This argument is wholly without merit. To begin, the Court only considered one of the State's motions for sentencing as an habitual offender. Defendant pled guilty to all relevant offenses. There is no legal support for the

proposition that double jeopardy applies under these circumstances.<sup>1</sup> Further, even if the Court previously had found Defendant habitual eligible, that determination does not give rise to any double jeopardy rights. Whether or not the Defendant has been declared an habitual offender, and whether habitual offender status remains for purposes of future sentencing, is a matter of statutory law pertaining to sentencing.<sup>2</sup> There is no suggestion of any retrial or duplicative charges.

9. Defendant also argues: “The Defendant’s sentence as an habitual offender is illegal and in violation of his procedural due process rights because the State used an unauthorized habitual offender determination to declare Defendant an habitual offender.” It appears that Defendant’s claim is based upon the fact that in the first Motion, the State was seeking habitual sentencing on the Aggravated Harassment charge; and in the second Motion, the State was seeking habitual sentencing on the Assault Second Degree charge.

10. The Court finds no merit to this argument. The State has the discretion to move for habitual sentencing on one or all charges. The fact that the State ultimately elected habitual offender status on only one charge is to the distinct

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<sup>1</sup>Del. Const. art. I, §8 (“no person shall be for the same offense twice put in jeopardy of life or limb”).

<sup>2</sup>11 *Del. C.* §4214.

benefit of Defendant. The October 30, 2006 Motion was entirely proper, and not in any way in violation of Defendant's procedural and substantive due process rights.

**THEREFORE**, Defendant's Motion for Correction of an Illegal Sentence is hereby **DENIED**.

**IT IS SO ORDERED.**

*/s/ Mary M Johnston*

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The Honorable Mary M. Johnston