

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE, :
 : I.D. No. 1306012822
 v. :
 :
 GRADY HARRELL, :
 :
 Defendant. :

Submitted: December 11, 2013
Decided: January 29, 2014

ORDER

Upon the State's Motion to Declare Defendant
as a Habitual Offender. *Denied.*

Marie O'Connor Graham, Esquire, Department of Justice, Dover, Delaware; attorney
for the State of Delaware.

Paul S. Swierzbinski, Esquire, Office of the Public Defender, Dover, Delaware;
attorney for Defendant.

WITHAM, R.J.

ISSUE

Whether Defendant's prior convictions qualify him for habitual criminal status pursuant to 11 *Del. C.* § 4214(a).

FACTUAL AND PROCEDURAL BACKGROUND

On or about November 4, 2013 Defendant Grady Harrell (hereinafter "Defendant") pleaded guilty to one count of Possession of Firearm Ammunition by a Person Prohibited. On December 3, 2013 the State filed its Motion to Declare a Habitual Offender pursuant to 11 *Del. C.* § 4214(a). In the Motion, the State lists four separate convictions, three of which are out-of-state convictions from Florida: (1) a Florida conviction for Robbery Using Deadly Weapon or Firearm on January 6, 1999; (2) a Florida conviction for Robbery Using Deadly Weapon or Firearm and Felony Causing Bodily Injury, also dated January 6, 1999; (3) a Florida conviction for Felony Battery on April 21, 2003; and (4) a Delaware conviction for Assault in the Second Degree on October 9, 2007.

In support of its Motion, the State has provided the Court with certified court conviction records from the State of Florida for each of the three Florida convictions. These records indicate that Defendant pleaded guilty to each of the offenses for which he was convicted. The Florida conviction records do not contain any description whatsoever of the underlying conduct leading to each conviction, nor do they contain any text or details of the guilty pleas for each conviction. The records for each Florida conviction includes documents containing what are purported to be Defendant's fingerprints. These documents also contain a line on which Defendant's

social security number is supposed to be filled in; however, the line is left blank for each of the three Florida convictions. As to the 2007 Delaware conviction, the State has provided the Court with a certified copy of the criminal docket in that case, which indicates that Defendant pleaded guilty to Assault in the Second Degree and the State *nolle prossed* the other charges. Each side has had the opportunity to make submissions concerning this matter as noted below.

The Court heard oral arguments on the State's Motion on December 11, 2013. The State acknowledged that the two 1999 Florida convictions, which were on the same date, counted as a single conviction for the purposes of declaring a habitual offender. The 2007 Delaware conviction was not discussed. It was brought to the Court's attention that while Defendant admitted to the presentence officer that Defendant had committed the robberies for which he was convicted in 1999, Defendant denied ever having committed the battery for which he was convicted in 2003. Defendant also argued that under the Delaware Supreme Court's holding in *Morales v. State*,¹ the State was required to provide copies of the indictments for each of the Florida convictions as well as transcripts for the entry of each guilty plea leading to the Florida convictions. Finally, the State informed the Court that its fingerprint analyst could not verify that the fingerprints contained in the Florida conviction records were in fact Defendant's. The Court reserved decision on the Motion.

Following oral arguments, Defendant filed a letter with the Court dated

¹ 696 A.2d 390 (Del. 1997).

December 11, 2013 in which Defendant argued that based on the State's concession that the fingerprints in the Florida conviction record could not be verified, the State had conceded that Defendant could not be declared habitual. Defendant contended that based on this concession, the Motion to Declare a Habitual Offender was no longer before the Court.

The State responded to these arguments in its own letter to the Court dated December 18, 2013. The State refuted Defendant's assertions that the State had conceded the Motion, and argued that verified fingerprints were not required in order to declare a defendant a habitual criminal. The State further argued that even though Defendant denied the 2003 Florida conviction, the certified conviction records provided enough information for the Court to decide the Motion. The State also argued that copies of indictments and the text of out-of-state guilty pleas are not necessary in order to declare a defendant a habitual criminal.

LEGAL STANDARD

There are two distinct ways a defendant may be declared a habitual offender.² Section 4214(a) provides that any person "who has been 3 times convicted of a felony, other than those which are specifically mentioned in subsection (b) of this section, under the laws of this State, and/or any other state," and who is subsequently convicted of a fourth felony in Delaware is to be declared a habitual offender.³

² See *Crosby v. State*, 824 A.2d 894, 900 (Del. 2003).

³ 11 *Del. C.* § 4214(a).

Section 4214(b) includes a specific list of enumerated felonies, and provides that any person subsequently convicted after two previous convictions for any of the enumerated felonies, under Delaware law or the laws of another state, shall be declared a habitual offender.⁴ Stated differently, predicate offenses under § 4214(a) may be any felony, while predicate offenses under § 4214(b) must be one of the enumerated felonies listed in that section.⁵

The State bears the burden of proof in establishing that each predicate offense meets the requirements of § 4214; the State must prove its case beyond a reasonable doubt.⁶ If the predicate offense is based on an out-of-state conviction, “the conduct leading to an out-of-state judgment must be such that it would have supported a conviction for the appropriate predicate offense in Delaware.”⁷ When the predicate offense is based on a guilty plea, the State “must also establish beyond a reasonable doubt that the defendant actually pleaded guilty to. . .a predicate offense, and not merely that the defendant was charged with one.”⁸

⁴ 11 *Del. C.* § 4214(b).

⁵ *Hall v. State*, 788 A.2d 118, 128 (Del. 2001).

⁶ *See Trawick v. State*, 845 A.2d 505, 510 (Del. 2004) (quoting *Morales*, 696 A.2d at 395).

⁷ *Hall*, 788 A.2d at 128 (citing *Fletcher v. State*, 409 A.2d 1254, 1255 (Del. 1979)).

⁸ *Id.*

DISCUSSION

The State did not concede the Motion

Defendant relies on the Delaware Supreme Court’s holding in *Taylor v. State*⁹ to argue that the State conceded its Motion to Declare a Habitual Offender when it conceded that the fingerprints in the Florida conviction records could not be verified. In *Taylor*, the Supreme Court found that the prosecutor had made a concession that entitled the defendant to a judgment of acquittal on four of the eight charges brought against the defendant when the prosecutor made a remark during summation to the effect that the State “probably” had not presented sufficient evidence to establish those charges.¹⁰ The Supreme Court held that “the prosecutor had a duty not to pursue such charges when he was convinced, as he conceded to the jury, that acquittal was probable. . . .”¹¹

Taylor is inapposite to the case *sub judice*. During oral arguments, the State did not concede that it could not establish the Florida convictions beyond a reasonable doubt. Rather, the State merely acknowledged that there was difficulty in verifying that the fingerprints included in the certified conviction records belonged to Defendant. In *Winchester v. State*, the Supreme Court explicitly rejected the argument that the State had a legal duty to provide fingerprint evidence to verify the

⁹ 827 A.2d 24 (Del. 2003).

¹⁰ *Id.* at 25.

¹¹ *Id.* at 28.

defendant's identity in a prior conviction in order for the defendant to be declared habitual.¹² The Supreme Court explained that the State is only required to "produce sufficient evidence to prove beyond a reasonable doubt that [the defendant] is the same individual listed in the State's motion."¹³

Thus, to the extent that Defendant is arguing that failure to verify fingerprint records in an out-of-state conviction *per se* prevents the State from meeting its burden in a motion to declare a habitual offender, such argument must be rejected. Because fingerprint verification is not required, the State's failure to verify the fingerprints in the Florida conviction records, alone, does not defeat the State's Motion or otherwise trigger a legal duty on the part of the State to stop pursuing the Motion. It follows that the State's acknowledgment of difficulties in verifying the fingerprints does not amount to a concession of its Motion.

There is no categorical rule that the State must provide copies of indictments and guilty plea transcripts in order to prove out-of-state convictions

Turning now to the merits of the State's Motion, the Court considers Defendant's argument that under *Morales*, the State was required to provide copies of the indictments and transcripts of the guilty pleas for each of the Florida convictions, including the 1999 convictions to which Defendant has admitted.¹⁴

¹² *Winchester v. State*, 790 A.2d 477, 2002 WL 181214, at *1 (Del. Jan. 31, 2002) (TABLE).

¹³ *Id.*

¹⁴ As correctly acknowledged by the State, the 1999 robbery convictions, while two separate convictions, count as one offense for the purposes of declaring a habitual offender because the convictions arose from the same set of circumstances. *See Buckingham v. State*, 482 A.2d 327, 330-

In *Morales*, in a motion filed pursuant to § 4214(b), the State offered two certified copies of indictments of the defendant’s drug convictions from Massachusetts along with the docket entries for both cases.¹⁵ The docket entries indicated that the defendant pleaded guilty, but the records provided by the State contained no information at all about the substance of the pleas, or to which charges defendant actually pleaded guilty.¹⁶ Relying on cases from other jurisdictions, the Supreme Court held that when a guilty plea forms the basis for a predicate offense, the State must “provide not only the underlying indictment or information, but also the text of the guilty plea, in order to determine whether the defendant was charged with and admitted to conduct that would establish the felony conviction.”¹⁷ The Supreme Court went on to explain that “[i]t is necessary. . .that the charge and the conviction of the prior predicate felony must match beyond a reasonable doubt.”¹⁸ The *Morales* Court stressed that even if the crimes charged matched with the crimes the defendant pleaded guilty to, the State was still required to provide evidence of the defendant’s conduct underlying the out-of-state convictions to establish whether they

31 (Del. 1984) (holding that separate and successive convictions, rather than multiple convictions arising from “a single set of criminal episodes” are required in counting convictions for the purposes of declaring a habitual criminal).

¹⁵ *Morales*, 696 A.2d at 395.

¹⁶ *Id.*

¹⁷ *Id.* (citations omitted).

¹⁸ *Id.*

equated to the predicate felonies enumerated in § 4214(b).¹⁹

To the extent that *Morales* can be read to always require the text of a guilty plea in order to establish a predicate offense, the Supreme Court limited that aspect of *Morales* in *Hall v. State*, which also involved a motion to declare a habitual offender filed pursuant to § 4214(b).²⁰ In *Hall*, the State provided the Superior Court with a docket sheet that unambiguously indicated that the defendant had pleaded guilty to a Delaware offense.²¹ In rejecting the defendant's argument that this was insufficient proof of a predicate offense under *Morales*, the Supreme Court explained:

Morales stands only for the proposition that the State must show a guilty plea offered as a predicate offense for habitual offender status beyond a reasonable doubt, not that it must necessarily do so with the text of that guilty plea. Both this Court and the Superior Court have favored this narrower reading. In fact, we are aware of no other jurisdiction, state or federal, that categorically requires the text of a guilty plea in order to show habitual offender status. Finally, some jurisdictions may not keep records of the text of every guilty plea offered for decades. Given that guilty pleas are a significant percentage of all convictions, such a rule might significantly reduce the utility of the habitual offender statute in a way that the Delaware General Assembly did not intend. Therefore, we decline to adopt [the defendant's argument].²²

¹⁹ *Id.* (citing *Fletcher*, 409 A.2d at 1255).

²⁰ *Hall*, 788 A.2d at 121.

²¹ *Id.* at 126.

²² *Id.* at 127 (internal citations omitted).

The *Hall* Court held that “the State need offer only unambiguous documentary evidence of a prior predicate conviction, not live witnesses, and not a particular or exclusive type of documentary evidence.”²³ The Supreme Court explained that in order for the State to meet its burden of proof in establishing the predicate offense, the State must offer “evidence of the prior conviction that is regular on its face. . . [and] need not anticipate every possible difficulty in proof that a defendant might raise.”²⁴

Based on the Supreme Court’s decision in *Hall*, this Court must reject Defendant’s proposed categorical rule that the text of a guilty plea and certified copies of indictments are always required in order to establish an out-of-state predicate offense. So long as the records and evidence offered by the State are regular on their face in establishing that Defendant pleaded guilty to the Florida offenses, and in establishing that these offenses are equivalent to a Delaware felony, the State has met its burden.

The State has failed to meet its burden in establishing the 2003 battery conviction

Pursuant to § 4214(a), the records offered by the State must establish at least three separate felony convictions under Delaware law in order to qualify Defendant for habitual offender status. The docket sheet offered by the State in support of the 2007 assault conviction is sufficient to establish a predicate offense; this is a

²³ *Id.* at 128

²⁴ *Id.* (citations omitted).

Delaware offense, and the proffered proof of the conviction is equivalent to what was accepted by the Supreme Court in *Hall*. Accordingly, Defendant's 2007 Delaware conviction for Assault in the Second Degree counts as one predicate offense necessary for habitual offender status.

As noted *supra*, the 1999 Florida robbery convictions count as one conviction for the purposes of deciding the instant Motion. Unlike the records provided in *Morales*, the Florida conviction records unambiguously indicate that Defendant pleaded guilty to 2 counts of Robbery Using a Deadly Weapon or Firearm for the first individual conviction and to Robbery and Felony Causing Bodily Injury for the second individual conviction. The Court notes that these records are not ideal; there is no description whatsoever of the underlying conduct that resulted in the 1999 convictions. Further, a line that is supposed to contain Defendant's social security number is left blank. Nonetheless, Defendant admitted that he committed these robberies to the presentence officer. It would be counterintuitive in the Court's opinion to decline to accept records of out-of-state convictions to which a defendant expressly admits having committed, particularly when the descriptions of the offenses can be easily equated to a Delaware offense (in this case, robbery). Thus, considered together, the 1999 Florida robbery convictions count as a second predicate felony offense under § 4214(a).

While the insufficiencies in the 1999 conviction records can be overlooked due to Defendant's admission to the robberies, the Court cannot do so for the 2003 battery conviction. Defendant denies committing and pleading guilty to this offense. While

transcripts of guilty pleas are not *per se* required, some proof of the guilty plea having been entered should be offered in cases where the defendant outright denies having made the guilty plea. As with the 1999 conviction records, the 2003 battery records contain no description whatsoever of Defendant's conduct that resulted in the conviction. This is especially critical in considering the 2003 conviction, because "Felony Battery" is an offense that does not exist under Delaware law. The statutory description of the offense does not aid the court in equating the conviction to a Delaware felony, because the statute actually contains what appears to be two separate offenses: felony battery, and domestic battery by strangulation.²⁵ Without any description of the conduct underlying the conviction, the Court is left to guess as to which section of the statute Defendant was convicted. The absence of any description of the underlying conduct also prevents the Court from equating the conviction to a Delaware felony offense. Finally, as Defendant contests pleading guilty to the offense, the Court finds that the State has offered no proof that Defendant actually entered a guilty plea for the 2003 conviction.

The Court finds the proof offered by the State in support of the 2003 Florida battery conviction insufficient. The State has only established two of the three felony convictions required for habitual offender status under § 4214(a). Accordingly, the State has failed to meet its burden of proof.

CONCLUSION

The Court rejects the categorical rules regarding fingerprints and out-of-state

²⁵ FLA. STAT. ANN. § 784.041(1)-(2)(a) (West 2007).

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guilty pleas proposed by Defendant. However, the State has failed to meet its burden regarding the 2003 Florida battery conviction. This prevents the State from establishing proof of three felony convictions required by § 4214(a). Accordingly, the State's Motion to Declare Defendant a Habitual Offender is **DENIED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Marie O. Graham, Esquire
Paul S. Swierzbinski, Esquire