

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,	)	
	)	
v.	)	I.D. # 1104009042
	)	
JASON GRZYBOWSKI,	)	
	)	
Defendant.	)	

Date Submitted: June 13, 2024

Date Decided: July 17, 2024

**ORDER DENYING DEFENDANT’S FOURTH  
MOTION FOR CORRECTION OF ILLEGAL SENTENCE**

Having considered defendant’s Motion for Correction of Illegal Sentence pursuant to Superior Court Criminal Rule 35(a),<sup>1</sup> for the following reasons, the motion is **DENIED**.

***Procedural and Factual Background***

1. In October 2011, Jason Grzybowski (“Grzybowski”) pled guilty to charges of Burglary Second, Theft, and Conspiracy Second.<sup>2</sup> The Burglary Second charge carried a sentence of 0 to 8 years in prison.<sup>3</sup> In the Plea Agreement, Grzybowski agreed that he was eligible to be sentenced as a habitual offender. The Truth-In-Sentencing form, signed by Grzybowski, disclosed that he faced 8 years to

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<sup>1</sup> D.I. 53.

<sup>2</sup> D.I. 35.

<sup>3</sup> Burglary Second is a Class D felony. 11 *Del. C.* § 825. As a Class D felony, the Court may impose a sentence of up to 8 years in prison. 11 *Del. C.* § 4205(b)(4).

life in prison on the Burglary Second charge, which reflected the range for his possible sentence on this charge as a Habitual Offender. The State agreed to cap its recommendation at 15 years at Level V.

2. In December 2011, the State filed a Motion to Declare Jason R. Grzybowski a Habitual Offender, pursuant to 11 *Del. C.* § 4214(a). The Habitual Offender motion was predicated on the following three felony convictions:<sup>4</sup>

<b>Offense</b>	<b>Offense Date</b>	<b>Conviction Date</b>	<b>Sentence Date</b>
Burglary Third Degree	Sept. 24, 1999	Jan. 24, 2000	Oct. 6, 2000
Burglary Second Degree	Jan. 7, 2008	Sept. 23, 2008	Sept. 23, 2008
Escape Second Degree	July 7, 2010	July 30, 2010	July 30, 2010

3. At the April 20, 2012 sentencing hearing, the Court granted the Habitual Offender motion and declared Grzybowski a Habitual Offender. On the Burglary Second charge, Grzybowski was sentenced to 18 years at Level V.<sup>5</sup>

4. On July 9, 2012, Grzybowski filed a Motion for Correction of Illegal Sentence (the “First Motion”),<sup>6</sup> asserting that his sentence was illegal because the Habitual Offender motion was filed by a Deputy Attorney General and not the Attorney General. Therefore, he argued, his Level V time should be reduced to 8 years. He wanted to be sentenced without an enhancement as a Habitual Offender.

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<sup>4</sup> D.I. 36.

<sup>5</sup> D.I. 39. He was sentenced to Level V time for the Theft and Conspiracy Second charges, which were suspended for supervision at Levels IV and III.

<sup>6</sup> D.I. 40.

The Court summarily dismissed the First Motion, finding that the Habitual Offender motion was properly filed.<sup>7</sup>

5. On December 27, 2016, Grzybowski filed another Rule 35(a) Motion for Correction of Sentence (the “Second Motion”).<sup>8</sup> In the Second Motion, Grzybowski again challenged any enhancement to his sentence. On May 1, 2017, the Court summarily denied the Second Motion because the Habitual Offender motion was properly filed and the sentence was proper.<sup>9</sup>

6. On April 16, 2020, Grzybowski filed another Rule 35 motion, seeking a Modification of Sentence (the “Third Motion”).<sup>10</sup> This motion, like the previous motions, challenged his Habitual Offender sentence. The Third Motion requested relief under an amendment to the Habitual Offender statute, 11 *Del. C.* § 4214(f). The amendment, among other things, permitted eligible defendants to petition the Court for a sentence modification. Grzybowski again asked to be sentenced under the Burglary statute, without any enhancement.

7. On July 30, 2020, the Court summarily dismissed the Third Motion.<sup>11</sup> The Court explained that under the 2017 amendment to Section 4214(f), the Court adopted Special Rule of Procedure 2017-1, which provided for the appointment of

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<sup>7</sup> D.I. 41.

<sup>8</sup> D.I. 42.

<sup>9</sup> D.I. 44.

<sup>10</sup> D.I. 45.

<sup>11</sup> D.I. 49.

counsel from the Office of Defense Services (“ODS”) for *eligible* defendants to petition the Court. The Third Motion was filed by Grzybowski, without counsel, which was not permitted under the rule. Accordingly, the Court forwarded the Third Motion to ODS and suggested that Grzybowski contact ODS to discuss his motion.<sup>12</sup>

8. On September 9, 2021, Grzybowski filed a Motion to Proceed *Pro Se* for Relief under Title 11 – 4214(f).<sup>13</sup> On December 16, 2021, the Court denied this motion, explaining that Grzybowski was not eligible for relief under Section 4214(f).<sup>14</sup> The Court further explained that to be eligible for such relief, the offender must be serving a sentence that is a minimum sentence of not less than the statutory maximum penalty for a violent felony.<sup>15</sup> As Grzybowski was advised at his plea hearing, he faced a minimum of 8 years and the maximum of life imprisonment for the Burglary Second charge. The sentencing judge did not impose the maximum (life imprisonment), but rather, sentenced Grzybowski to 18 years. Thus, the Court exercised its discretion and sentenced Grzybowski to 10 years more than the statutory (non-enhanced) maximum of 8 years.<sup>16</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> D.I. 50.

<sup>14</sup> D.I. 52.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

### *The Motion*

9. On June 13, 2024, Grzybowski filed yet another Rule 35(a) motion seeking a Correction of Illegal Sentence (the “Fourth Motion”).<sup>17</sup> In his Fourth Motion, Grzybowski again challenges his sentence as illegal under the Habitual Offender statute. This time, Grzybowski argues that the sentence is illegal because “[t]here must be a form of release between conviction[s]” and he was serving a sentence for his 2008 Burglary Second conviction when he was charged with Escape Second. Therefore, he asserts, he should not have been sentenced as a Habitual Offender.

### *Standard of Review*

10. Under Superior Court Criminal Rule 35(a), the Court “may correct an illegal sentence at any time.”<sup>18</sup> Rule 35(a) relief is limited to instances “when the sentence imposed exceeds statutorily-authorized limits, [] violates the Double Jeopardy Clause, ... is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.”<sup>19</sup>

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<sup>17</sup> D.I. 53.

<sup>18</sup> Super. Ct. Crim. R. 35(a).

<sup>19</sup> *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998) (citations omitted). See *Ellerbe v. State*, 155 A.3d 1283 (TABLE), 2017 WL 462144, at \*1 (Del. Feb. 2, 2017).

11. Under Delaware’s Habitual Offender statute, 11 *Del. C.* § 4214, when a defendant is convicted of the requisite number of felonies, he/she may be declared a Habitual Offender. The Delaware Supreme Court has made clear that “when a procedurally adequate petition demonstrating the existence of the requisite number of prior felony convictions is filed – this Court’s declaration of habitual criminal status is *not* discretionary.”<sup>20</sup> Thus, “where the State initiates the Habitual Offender process, the court is limited to granting only the result sought by the State.”<sup>21</sup>

12. To resolve the question of whether two felony convictions in one proceeding could count as two convictions for purposes of the Habitual Offender statute, the Delaware Supreme Court ruled in *Hall v. State*: to be counted for purposes of this statute, a subsequent conviction must have been “on account of an offense which occurred after sentencing had been imposed for the [prior] offense.”<sup>22</sup> Thus, the sequencing must be crime-conviction-sentence, crime-conviction-sentence, with no overlap for each given felony that is included in the application.<sup>23</sup> The required temporal gap between the felonies is the period for “some chance for

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<sup>20</sup> *State v. Peters*, 283 A.3d 668, 690 (Del. Super. 2022) (citing *Reeder v. State*, 2001 WL 355732, at \*3 (Del. Mar. 26, 2001) (“We disagree that habitual offender status is discretionary under § 4214.”); *Brown v. State*, 2020 WL 609646, at \*2 (Del. Feb. 7, 2020)).

<sup>21</sup> *Id.* (citation omitted).

<sup>22</sup> *Id.* at 691 (quoting *Hall v. State*, 473 A.2d 352, 356 (Del. 1984)).

<sup>23</sup> *Id.* at 692.

rehabilitation.”<sup>24</sup> “Some chance for rehabilitation” does not mean release from prison between convictions.<sup>25</sup>

### *Analysis*

13. As shown by the chart above, each of Grzybowski’s three predicate felonies satisfy the required temporal gap – each subsequent felony was committed *after* the sentencing on the prior conviction. Thus, there was no overlap and the sentence on the Burglary Second charge was, and remains, appropriate.

14. Grzybowski argues that under *Siple v. State*,<sup>26</sup> there must be a period of “release” from incarceration for a subsequent felony to be eligible under the Habitual Offender statute. Because Grzybowski was still serving his sentence on his 2008 Burglary conviction when he walked away from the Plummer Center and was charged with Escape Second, he contends this latter felony cannot count as the third felony for purpose of the Habitual Offender statute.<sup>27</sup> Without the requisite number of eligible felonies, he asserts, an enhanced sentence cannot be imposed.

15. Grzybowski misreads *Siple*. *Siple* was sentenced to two terms of life imprisonment for Unlawful Sexual Intercourse. At sentencing, the court considered

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<sup>24</sup> *Eaddy v. State*, 679 A.2d 469 (TABLE), 1996 WL 313499, at \*2 (Del. May 30, 1996) (“‘some chance for rehabilitation’ means only that some period of time must have elapsed between sentencing on an earlier conviction and the commission of the offense resulting in the later felony.”)

<sup>25</sup> *Peters*, 283 A.3d at 693 (citing *Payne v. State*, 640 A.2d 655 (TABLE), 1994 WL 91244, at \*1 (Del. Mar. 9, 1994)).

<sup>26</sup> 701 A.2d 79 (Del. 1997).

<sup>27</sup> D.I. 53.

Siple’s then-recent convictions in other states for similar crimes. He had not yet been sentenced in those matters. Siple challenged his sentence alleging that the sentencing judge misconstrued the term “repetitive criminal conduct” as an aggravating factor in Siple’s sentencing. Siple argued that the Habitual Offender standard should apply (requiring that a defendant be *sentenced* on a predicate felony before it could be a basis for a Habitual Offender motion). In distinguishing “repetitive criminal conduct” and the purpose of the Habitual Offender statute, the Delaware Supreme Court said the purpose of the latter statute was to “separate civilized society from individuals who have demonstrated their incorrigibility by repeatedly being incarcerated, *released*, and convicted of subsequent criminal offenses”<sup>28</sup> and cited its prior decision in *Hall v. State*.<sup>29</sup> In *Hall*, the Court made clear that the Habitual Offender statute applied to those “who have been twice convicted of the specified felonies in prior proceedings where the *second conviction took place on account of an offense which occurred after sentencing had been imposed for the first offense*. Of course, it is even clearer that the third offense in turn must have taken place after the sentencing for the second offense.”<sup>30</sup> Thus, the Supreme Court’s reference in *Siple* to being “released” did not mean that a defendant

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<sup>28</sup> *Siple*, 701 A.2d at 85 (emphasis added).

<sup>29</sup> 473 A.2d at 356 (emphasis added).

<sup>30</sup> *Id.* at 357 (emphasis added).



must have completed his prior sentence before a subsequent offense could become eligible as an offense under the Habitual Offender statute.

16. Grzybowski's sentence was proper under the Habitual Offender statute and therefore, it was legal, and the Motion is DENIED.

IT IS SO ORDERED.

*/s/Kathleen M. Miller*  
Judge Kathleen M. Miller