



IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD LEWIS,)
)
Defendant-Below,)
Appellant,)
)
v.) No. 495, 2018
)
STATE OF DELAWARE,)
)
)
Plaintiff-Below,)
Appellee.)

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
DELAWARE IN AND FOR KENT COUNTY

APPELLANT'S OPENING BRIEF

Brett A. Hession [#6041]
Assistant Public Defender
820 N. French Street, 3rd Floor
Wilmington, DE 19801
(302) 577-5128

DATE: January 15, 2019

TABLE OF CONTENTS

TABLE OF CITATIONS ii

NATURE AND STAGE OF THE PROCEEDINGS 1

SUMMARY OF THE ARGUMENT 3

STATEMENT OF FACTS 4

ARGUMENT

**I. THE SUPERIOR COURT INCORRECTLY INTERPRETED
 THE HABITUAL OFFENDER STATUTE WHEN IT RULED
 THAT APPELLANT HAD NOT MET THE TIME-SERVED
 ELIGIBILITY REQUIREMENT OF THE STATUTE 7**

CONCLUSION..... 17

Superior Court Ruling..... Exhibit A

Superior Court Order Exhibit B

TABLE OF CITATIONS

Cases

Butcher v. State, 171 A.3d 537 (Del. 2017).....7

Clark v. State, 184 A.3d 1292, 2018 WL 1956298 (Del. Apr. 24, 2018)
(ORDER)12

Dambro v. Meyer, 974 A.2d 121 (Del. 2009).....12

Dennis v. State, 41 A.3d 391 (Del. 2012)7

LeVan v. Independence Mall, Inc., 940 A.2d 929 (Del. 2007).....12

Lewis v. State, 869 A.2d 327, 2004 WL 3220296 (Del. Feb. 22, 2005) (ORDER) ..5

Norcross v. State, 816 A.2d 757 (Del. 2003).....15

One-Pie Investments, LLC v. Jackson, 43 A.3d 911 (Del. 2012).....12

Rauf v. State, 145 A.3d 430 (Del. 2016).....15

State v. Lewis, ID No. 0305000877, 2018 WL 4151282
(Del Super. Ct. Aug 28, 2018).....13

Taylor v. Diamond State Port Corp., 14 A.3d 536 (Del. 2011)7

Statutes

11 *Del. C.* § 4205 (2003)10

11 *Del. C.* § 4214*passim*

Session Laws

74 *Del. Laws* ch. 106 (2003).....10

80 *Del. Laws* ch. 321 (2016).....5

Court Rules

DEL. SUPER. CT. SPECIAL R. P. 2017-1.....1, 5, 7

Other Authority

Markell Signs Mandatory Sentencing Reform into Law, DELAWARE NEWS (July 20, 2016), <https://news.delaware.gov/2016/07/20/markell-signs-mandatory-sentencing-reform-into-law/> 8, 14

Matthew Albright, *Delaware to scale back three-strikes laws*, THE NEWS JOURNAL (June 21, 2016), <https://www.delawareonline.com/story/news/politics/2016/06/21/three-strikes-laws/86188402/> 8, 14

NATURE AND STAGE OF PROCEEDINGS

On May 17, 2017, Mr. Lewis, through counsel, filed a Motion for a Certificate of Eligibility to File a Petition to Modify Sentence in the Superior Court. This was done pursuant to *Superior Court Special Rule of Procedure 2017-1*. The State filed its response in opposition on June 26, 2017, arguing that Mr. Lewis was ineligible to file a motion to modify his sentence because of a prior conviction for Burglary in the Second Degree that was not cited in its original motion to declare Mr. Lewis an habitual offender. Following supplemental briefing, the Superior Court held an evidentiary hearing on December 6, 2017.

At the evidentiary hearing, Mr. Lewis argued: (1) that the Court may not consider the alleged 1979 Burglary in the Second Degree conviction because it was not cited as a predicate offense in the State's 2004 Motion to Declare An Habitual Offender; and (2) that even if the Court could consider the 1979 Burglary in the Second Degree Conviction, the State had not proven the existence of the conviction beyond a reasonable doubt.

At the evidentiary hearing, the Superior Court ruled that it may consider a conviction not included in the original Motion to Declare An Habitual Offender, but reserved decision on whether the State had proven the 1979 Burglary in the Second Degree Conviction beyond a reasonable doubt.

Following the evidentiary hearing, the State provided the defense with additional materials regarding the 1979 Burglary in the Second Degree conviction which caused the defense to acknowledge that the State had proved its existence beyond a reasonable doubt. On August 28, 2018, the Superior Court issued an Order denying Mr. Lewis's Motion for a Certificate of Eligibility. Mr. Lewis filed a Notice of Appeal in this Court on September 25, 2018.

SUMMARY OF ARGUMENT

- I. The Superior Court incorrectly interpreted Delaware's habitual offender statute when it ruled that Mr. Lewis had not met the time-served eligibility requirement of the statute. Because 11 *Del. C.* § 4214(f) is ambiguous when applied in Mr. Lewis's case, the statute must be interpreted to discern its intent and effectuate its purposes. Principles of both statutory interpretation and fairness require that the Superior Court's ruling in this case be reversed.

STATEMENT OF FACTS

On March 30, 2004, following a jury trial before the Superior Court in Kent County, the Appellant, Edward Lewis, was convicted of Aggravated Menacing, Possession of a Deadly Weapon During the Commission of a Felony, Reckless Endangering in the Second Degree, Assault in the Third Degree, and Disorderly Conduct.¹ Following the trial, the State filed a Motion to Declare An Habitual Offender.² In its motion, the State cited the following predicate convictions in Mr. Lewis's criminal history to justify its request: (1) 1996 – Carrying a Concealed Deadly Weapon; (2) 1994 – Conspiracy in the Second Degree; and (3) 1994 – Possession of a Deadly Weapon by a Person Prohibited.³ The State requested that the Superior Court declare Mr. Lewis an habitual offender as to the Possession of a Deadly Weapon During the Commission of a Felony conviction.⁴

The State's motion was granted. On July 27, 2004, the Honorable James T. Vaughn, Jr. sentenced Mr. Lewis to 20 years at Level V incarceration on the Possession of a Deadly Weapon During the Commission of a Felony conviction, which was the minimum amount of jail time the Court could impose.⁵ The

¹ A-001.

² A-011.

³ A-011-12.

⁴ A-012.

⁵ A-025. On the remaining convictions, the Superior Court imposed Level V sentences immediately suspended for various levels of probation. A-025-26.

convictions were affirmed by this Court on direct appeal.⁶ Mr. Lewis has been incarcerated since January 9, 2004.

In 2016, the Delaware General Assembly enacted Senate Substitute 1 for Senate Bill 163, “An Act to Amend Title 11 of the Delaware Code Relating to Habitual Offenders.” The bill was signed into law on July 19, 2016.⁷ The new statute, among other things, provides an avenue of potential relief for some habitual offenders who were sentenced under the previous version of the habitual offender statute.⁸ The statute also directed the Superior Court to establish the procedure for the adjudication of the petitions that would be generated by the new statute.⁹

In response to this legislation, the Superior Court promulgated *Special Rule of Procedure 2017-1*, which governs how cases in which inmates seek relief under 11 *Del. C.* § 4214(f) will proceed.¹⁰ *Special Rule of Procedure 2017-1* mandates that, before a petitioner may file a motion to modify his or her sentence under § 4214(f), he or she must be granted a Certificate of Eligibility by the Superior Court.¹¹ *Special Rule of Procedure 2017-1* requires that the Superior Court determine that the petitioner has met the time-served eligibility requirements under

⁶ *Lewis v. State*, 869 A.2d 327, 2004 WL 3220296 (Del. Feb. 22, 2005) (ORDER).

⁷ 80 Del. Laws ch. 321 (2016).

⁸ 11 *Del. C.* § 4214(f).

⁹ *Id.*

¹⁰ DEL. SUPER. CT. SPECIAL R. P. 2017-1.

¹¹ DEL. SUPER. CT. SPECIAL R. P. 2017-1(c)(1).

§ 4214 before the Court may consider whether to modify the petitioner's sentence.

On May 17, 2017, Mr. Lewis filed a Motion for a Certificate of Eligibility to File a Petition to Modify Sentence in the Superior Court.¹² The State opposed the Motion on the grounds that a 1979 conviction for Burglary in the Second Degree rendered Mr. Lewis ineligible for relief under 11 *Del. C.* § 4214(f).¹³ In supplemental briefing, Mr. Lewis argued, in part, that because the 1979 Burglary in the Second Degree conviction was not cited by the State in its 2004 motion to declare Mr. Lewis an habitual offender, the conviction should not be considered in determining whether Mr. Lewis is eligible for relief under 11 *Del. C.* § 4214(f).¹⁴

The Superior Court held an evidentiary hearing on December 6, 2017.¹⁵ At that hearing the Court ruled that it could consider the 1979 Burglary in the Second Degree conviction to determine Mr. Lewis's eligibility for relief under the new habitual offender statute.¹⁶ Following the submission of additional evidence of the 1979 Burglary in the Second Degree conviction, the Superior Court denied Mr. Lewis's Motion for a Certificate of Eligibility on August 28, 2018.¹⁷

¹² A-042.

¹³ A-062.

¹⁴ A-071.

¹⁵ A-093.

¹⁶ Exhibit A.

¹⁷ Exhibit B.

I. THE SUPERIOR COURT INCORRECTLY INTERPRETED THE HABITUAL OFFENDER STATUTE WHEN IT RULED THAT APPELLANT HAD NOT MET THE TIME-SERVED ELIGIBILITY REQUIREMENT OF THE STATUTE.

Question Presented

Whether the Superior Court incorrectly interpreted the reformed Delaware habitual offender statute when it considered Mr. Lewis's 1979 conviction for Burglary in the Second Degree in determining that he had not met the time-served eligibility requirement to file a motion to modify his sentence under *Superior Court Special Rule of Procedure 2017-1*. This argument was preserved in both Mr. Lewis's supplemental briefing before the Superior Court¹⁸ and during the evidentiary hearing in this matter.¹⁹

Standard and Scope of Review

The standard of review is *de novo* where the Court is reviewing the trial court's interpretation of a statute.²⁰ Additionally, the standard of review is *de novo* where no facts are in dispute and the sentencing issue considered implicates the legal effect of the undisputed facts of prior convictions.²¹

¹⁸ A-072.

¹⁹ A-099.

²⁰ *Dennis v. State*, 41 A.3d 391, 393 (Del. 2012) (citing *Taylor v. Diamond State Port Corp.*, 14 A.3d 536, 538 (Del. 2011)).

²¹ *See Butcher v. State*, 171 A.3d 537, 539 (Del. 2017).

Merits of Argument

In 2016, following comments by some elected representatives that the prior version of 11 *Del. C.* § 4214 was not an effective tool for rehabilitating offenders and protecting public safety,²² a new version of 11 *Del. C.* § 4214 was signed into law. The updated version of § 4214 made several changes, addressing both the way future habitual offender cases would be adjudicated and providing an avenue of review for some habitual offenders still held in prison. Mr. Lewis was declared an habitual offender by the Superior Court in 2004 for Possession of a Deadly Weapon During the Commission of a Felony (“PDWDCF”).²³ He was sentenced to 20 years in prison,²⁴ which was the minimum sentence the trial court could impose under the previous version of 11 *Del. C.* § 4214(a).²⁵

In relevant part, the current version of 11 *Del. C.* § 4214 states:

(f) Notwithstanding any statute, court rule or regulation to the contrary, beginning January 1, 2017, any person sentenced as an habitual criminal to a minimum sentence of not less than the statutory maximum penalty for a violent felony pursuant to subsection (a) of this section, or a life sentence pursuant to subsection (b) of this

²² See *Markell Signs Mandatory Sentencing Reform into Law*, DELAWARE NEWS (July 20, 2016), <https://news.delaware.gov/2016/07/20/markell-signs-mandatory-sentencing-reform-into-law/> (“The trend of stiffer mandatory sentences for an increasing number of crimes hasn’t worked...”); Matthew Albright, *Delaware to scale back three-strikes laws*, THE NEWS JOURNAL (June 21, 2016), <https://www.delawareonline.com/story/news/politics/2016/06/21/three-strikes-laws/86188402/>.

²³ A-035.

²⁴ A-026.

²⁵ A-033.

section prior to July 19, 2016, shall be eligible to petition the Superior Court for sentence modification after the person has served a sentence of incarceration equal to any applicable mandatory sentence otherwise required by this section or the statutes describing said offense or offenses, whichever is greater.

At the time the State petitioned the Superior Court to declare Mr. Lewis an habitual offender, the State cited three prior felony convictions incurred by Mr. Lewis: (1) a 1996 conviction for Carrying a Concealed Deadly Weapon; (2) a 1994 conviction for Conspiracy in the Second Degree; and (3) a 1994 conviction for Possession of a Deadly Weapon by a Person Prohibited.²⁶ None of these prior convictions are defined as violent felonies under the relevant subsections for which Mr. Lewis was convicted.

Since the State cited no prior Title 11 violent felony convictions when he was convicted of PDWDCF in 2004, under the provisions of 11 *Del. C.* § 4214(f), he would be eligible for sentencing under the current version of 11 *Del. C.* § 4214(b), which reads:

Any person who has been 3 times convicted of a felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony, which is the person's first Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, shall receive a minimum sentence of 1/2 of the statutory maximum penalty provided elsewhere in this title....

²⁶ A-011-12.

On May 1, 2003, when Mr. Lewis committed the PDWDCF for which he was ultimately declared an habitual offender, the maximum statutory sentence a non-habitual offender could receive for that offense was 20 years at Level V.²⁷ Therefore, if Mr. Lewis were to be sentenced today under the current version of 11 *Del. C.* § 4214(b) for an offense he committed on May 1, 2003, his minimum mandatory sentence would be 10 years at Level V. Since Mr. Lewis has been incarcerated since January 9, 2004, he has served in excess of the minimum mandatory 10 years at Level V.

The State argued in the Superior Court that Mr. Lewis did not qualify for review of his sentence under § 4214(f) because he did not meet the time-served eligibility requirement imposed by that section. The State argued that Mr. Lewis's 1979 conviction for Burglary in the Second Degree, which was not cited by the State in its original petition to declare Mr. Lewis an habitual offender, can now be used in determining whether Mr. Lewis has met the requirements of § 4214(f). If Mr. Lewis's 1979 Burglary in the Second Degree conviction can be used, then Mr. Lewis's 2004 PDWDCF conviction would be eligible for sentencing under the current version of 11 *Del. C.* § 4214(c), which provides:

Any person who has been 2 times convicted of a felony under the laws of this State, and/or any other state, United States or any territory

²⁷ 11 *Del. C.* § 4205(b)(2) (2003). This section was later amended by the General Assembly to provide for a 25 year maximum sentence if a defendant is convicted of a Class B felony. 74 *Del. Laws* ch. 106, § 9 (2003).

of the United States, and 1 time convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State...and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined by § 4201(c) of this title, shall receive a minimum sentence of the statutory maximum penalty provided elsewhere in this title for the fourth or subsequent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal....

If Mr. Lewis is eligible for sentencing under § 4214(c), then the minimum mandatory jail sentence he must serve is 20 years. Because he has not yet served 20 years in prison, he would not be eligible to pursue relief under 11 *Del. C.* § 4214(f).

At the time Mr. Lewis was sentenced in this case, the State chose not to cite his 1979 Burglary in the Second Degree conviction in its petition to declare Mr. Lewis an habitual offender. The State should be held to this decision. Citing the conviction in the petition would have triggered a number of procedural rights at the time for Mr. Lewis, including the opportunity to challenge the validity of the conviction since it was not (and still is not) noted as a conviction in Mr. Lewis's State-maintained criminal history. Since this conviction was not cited in the State's petition, however, Mr. Lewis did not have this right.

The State may argue that, because the Superior Court stated at sentencing "I find that you have been convicted of the four offen[s]es that are listed in the State's motion, plus all of [the] other felony convictions that are listed in the presentence

report...,”²⁸ that Mr. Lewis did have the opportunity to challenge the 1979 Burglary in the Second Degree conviction at the time of sentencing. However, because the State did not cite the conviction in its petition, Mr. Lewis and his trial counsel did not have notice that its validity would be mentioned *sua sponte* by the Court at sentencing.

Principles of statutory interpretation require reversal of the Superior Court’s decision. “The goal of statutory construction is to determine and give effect to legislative intent.”²⁹ “The golden rule of statutory interpretation...is that unreasonableness of the result produced by one among possible interpretations...is reason for rejecting that interpretation in favor of another which would produce a reasonable result.”³⁰ Finally, judicial interpretation is only required if a statute contains ambiguity; if a statute is unambiguous, the plain meaning of the statutory language controls.³¹ “A statute is ambiguous ‘if it is reasonably susceptible of different constructions or interpretations’ or ‘if a literal reading of the statute would lead to an unreasonable or absurd result not contemplated by the legislature.’”³²

²⁸ A-035.

²⁹ *One-Pie Investments, LLC v. Jackson*, 43 A.3d 911, 914 (Del. 2012) (quoting *LeVan v. Independence Mall, Inc.*, 940 A.2d 929, 932 (Del. 2007)).

³⁰ *Dambro v. Meyer*, 974 A.2d 121, 130 (Del. 2009) (internal quotation omitted).

³¹ *Clark v. State*, 184 A.3d 1292, 2018 WL 1956298, at *2 (Del. Apr. 24, 2018) (ORDER).

³² *Id.* (quoting *Levan*, 940 A.2d at 933).

The current version of 11 *Del. C.* § 4214(f) is ambiguous when applied in Mr. Lewis's case. That ambiguity stems from whether Mr. Lewis has met the time-served eligibility requirements of § 4214(f). As relevant to Mr. Lewis's case, § 4214(f) mandates that, in order to be eligible to file a petition for modification of sentence, the petitioner must meet two basic requirements: (1) the petitioner was sentenced to no more than the minimum amount of jail time required by law at the time of sentencing; and (2) the petitioner must have served the minimum amount of jail time otherwise required by the other subsections of § 4214. Because Mr. Lewis was sentenced to the minimum amount of jail time he could be sentenced to at the time of his sentencing, he has met the first element.³³

However, an ambiguity exists with respect to the second element because § 4214(f) does not specify whether the Superior Court, in determining the minimum amount of jail time that the defendant must serve under the other sections of § 4214, must use the petition the sentencing Court used to declare the defendant a habitual offender, or may use the defendant's entire criminal history, regardless of whether the State cited certain convictions at the time of sentencing. This ambiguity in § 4214(f) requires that the Court interpret the statute by attempting to discern the legislative intent of the statute and effectuate its purposes.

³³ The Superior Court agreed with this in its August 28, 2018 ruling. *State v. Lewis*, ID No. 0305000877, 2018 WL 4151282, at *2 (Del. Super. Ct. Aug 28, 2018).

As noted above, elected representatives commented at the time the bill was passed that the intent of the bill was to reform the habitual offender statute.³⁴ The legislature recognized that some of the sentences imposed pursuant to the prior version of § 4214 punished offenders too harshly and addressed that issue through the legislative process. Mr. Lewis seeks only to use this legislation and the record in his case to ask the Superior Court to consider whether the sentence imposed in 2004 is one that should be reduced under the new legislation.

In addition to the comments made upon the enactment of the bill, the content of the law strongly suggests that its intent is to reform the habitual offender statute. The current version of § 4214 facilitates review of some habitual offender sentences by putting increased discretion in the hands of judicial officers. It provides an avenue of relief for some habitual offenders who have been incarcerated for extended periods of time and allows the Superior Court to consider whether further incarceration is appropriate based on an individual assessment of each case. This, combined with the comments made at the time of the bill's passage, show that the intent of the bill was to reform the habitual offender statute and allow review of sentences.

A ruling in Mr. Lewis's favor would not lead to an unreasonable result such that the rule stated in *Dambro* would be violated. If the Court rules in Mr. Lewis's

³⁴ See *supra* note 22.

favor, it would only allow him to *file* a petition for sentence modification with the Superior Court under § 4214(f). The Superior Court could then impose a sentence it finds appropriate, with 10 years being the minimum amount of jail time required. Thus, reversing the Superior Court's ruling in Mr. Lewis's case would only require the Superior Court to hear Mr. Lewis's petition for modification of sentence on its merits; it would not require any particular adjudication of that petition. This is not an unreasonable result.

Additionally, principles of fairness dictate that the State should be held to its decision not to cite the 1979 Burglary in the Second Degree conviction in its 2004 petition to declare Mr. Lewis an habitual offender. “[S]entencing decisions involve difficult and uniquely human judgments that defy codification and that buil[d] discretion, equity and flexibility into a legal system.”³⁵ It would be fundamentally inequitable to allow the State to use a 40 year old conviction, which it did not cite when asking the Superior Court to declare Mr. Lewis an habitual offender, to deny him an avenue of judicial review of his sentence under 11 *Del. C.* § 4214(f).

As the State chose not to cite Mr. Lewis's 1979 Burglary in the Second Degree conviction in its petition to declare Mr. Lewis an habitual offender, the conviction should not be considered in determining whether Mr. Lewis meets the time-served eligibility requirements of 11 *Del. C.* § 4214(f). Principles of both

³⁵ *Norcross v. State*, 816 A.2d 757, 769 (Del. 2003), *overruled on other grounds by Rauf v. State*, 145 A.3d 430 (Del. 2016).

statutory interpretation and fairness require that his Motion for a Certificate of Eligibility to File a Petition to Modify Sentence be granted.

As such, Mr. Lewis respectfully requests that this Court reverse the Superior Court's August 28, 2018 ruling and remand the case for proceedings consistent with this Court's decision.

CONCLUSION

For the reasons and upon the authorities set forth herein, Mr. Lewis respectfully requests that this Court reverse the Superior Court's ruling on the Motion for a Certificate of Eligibility to File a Petition to Modify Sentence and remand the case to the Superior Court for proceedings consistent with this Court's ruling.

Respectfully Submitted,

/s/ Brett A. Hession
Brett A. Hession [#6041]
Assistant Public Defender
820 N. French Street
Wilmington, DE 19801
(302) 577-5128

Date: January 15, 2019