



IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

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

STATE'S ANSWERING BRIEF

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DATE: February 5, 2019

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NATURE AND STAGE OF THE PROCEEDINGS

Appellee, the State of Delaware, generally adopts the Nature and Stage of the Proceedings as contained in Appellant Edward Lewis' January 15, 2019 Opening Brief.

This is the State's Answering Brief in opposition to Lewis' appeal from the Kent County Superior Court's denial of a Certificate of Eligibility to file for a sentence modification under 11 Del. C. § 4214(f) and Del. Super. Ct. Spec. R. 2017-1(d). See State v. Lewis, 2018 WL 4151282 (Del. Super. Aug. 28, 2018).

SUMMARY OF ARGUMENT

I. DENIED. 11 Del. C. § 4214(f), enacted in 2016, is not ambiguous as applied in Edward M. Lewis' case (A-107, 114); thus, the plain meaning rule of statutory interpretation applies. See Clark v. State, 2018 WL 1956298, at * 2 (Del. Apr. 24, 2018). Applying the plain meaning analysis, 11 Del. C. § 4214(f) does not require that the State have included all of an inmate's prior felony convictions in a habitual criminal motion pursuant to 11 Del. C. § 4214(a or b) filed 12 years prior to the 2016 amendment of 11 Del. C. § 4214 upon which Lewis relies. In 2004 it was unnecessary for the State to include Lewis' 1979 second degree burglary conviction in a motion to declare Lewis a habitual criminal pursuant to 11 Del. C. § 4214(a). (A-110).

Lewis does not meet the second time-served requirement of § 4214(f) to obtain a Certificate of Eligibility to move for a sentence modification because he has not yet completed the 20 year minimum mandatory Level V prison sentence imposed in 2004. The Superior Court is legally correct that Lewis is not entitled to a Certificate of Eligibility at this time. State v. Lewis, 2018 WL 4151282 (Del. Super. Aug. 28, 2018).

STATEMENT OF FACTS

Following a May 2, 2003 arrest (A-1), Edward M. Lewis was convicted in the Kent County Superior Court on March 30, 2004 of third degree assault (a lesser included offense of second degree assault), possession of a deadly weapon during the commission of a felony (PDWDCF), aggravated menacing, second degree reckless endangering, and disorderly conduct. (A-2). The State on May 24, 2004 filed a motion to sentence Lewis as a habitual criminal pursuant to 11 Del. C. § 4214(a). (A-2, 11-24).

The State's 2004 habitual criminal motion (A-11-24) alleged 3 prior felony convictions (1996 – CCDW; 1994 – second degree conspiracy; and 1994 – PDWBPP), in addition to the 2004 PDWDCF conviction. (A-11-12). At the July 27, 2004 Superior Court sentencing (A-30-41), Lewis admitted his 3 prior felony convictions cited in the State's habitual criminal motion. (A-35). Thereafter, the Superior Court found that Lewis was a habitual offender under 11 Del. C. § 4214(a), and proceeded with sentencing. (A-35). The trial judge noted that by law the Court was required to sentence Lewis to "20 years on the possession of a deadly weapon during commission of a felony." (A-35-36). Thereafter, in 2004, Lewis was sentenced as a habitual criminal to 20 years Level V imprisonment for his PDWDCF conviction. (A-25-26, 39).

Following the 2016 enactment of 11 Del. C. § 4214(f), effective January 1, 2017 [80 Del. Laws ch. 321 (2016)], Edward Lewis on May 17, 2017 (A-6), filed a Superior Court Motion for Certificate of Eligibility to File a Petition to Modify his July 27, 2004 twenty year habitual criminal sentence for PDWDCF. (A-42-61). The State on June 27, 2017 (A-6) filed a Response opposing Lewis' Motion for Certificate of Eligibility to move for a sentence modification. (A-62-70).

In its 2017 Response the State pointed out two inaccuracies in the DELJIS criminal history for Edward Lewis. First, as to Cr. A. No. IK88-09-0049, Lewis was convicted of misdemeanor third degree assault, not felony second degree assault. (A-64). Second, the DELJIS criminal history is incomplete as to a January 17, 1979 arrest where no disposition is indicated. (A-64). On January 18, 1980, Lewis was sentenced in the Kent County Superior Court for second degree burglary and two other felony convictions stemming from the 1979 arrest. (A-64).

The 1980 violent felony conviction for second degree burglary was not included in the State's 2004 habitual criminal motion (A-11-12), presumably because of the clerical error in not entering the 1980 second degree burglary conviction in the DELJIS criminal history for Lewis. In its June 2017 Response the State also pointed out that Lewis is not eligible to apply for a sentence review at this time because his 2004 sentence is for a Title 11 violent offense, not a Title 16 drug conviction which is to be reviewed first under the 2016 habitual criminal

legislation. (A-65). See 11 Del. C. § 4214(f), and Del. Super. Ct. Spec. R. 2017-1(d)(11).

Lewis' counsel filed a Reply on October 3, 2017. (A-7, 71-92). The Kent County Superior Court conducted an evidentiary hearing on December 6, 2017 to consider Lewis' Motion for Certificate of Eligibility. (A-93-159). At the December 2017 hearing the State offered evidence of Lewis' 1979 second degree burglary conviction that was not included in the 2004 habitual criminal motion. (A-120-40). During the hearing Lewis was fingerprinted in Court (A-137), and the latent print examiner testified that Lewis' current prints match the 1979 arrest fingerprints. (A-138).

At the December 6, 2017 Superior Court hearing Lewis' defense counsel presented two arguments: (1) the Court could not consider any conviction not included in the 2004 habitual criminal motion; and (2) there was insufficient evidence of Lewis' 1979 second degree burglary conviction. (A-98). During a subsequent April 24, 2018 Superior Court hearing (A-160-62), defense counsel conceded that there was no good faith basis to contest the 1979 prior second degree burglary conviction making Lewis eligible for habitual criminal sentencing. (A-160). Nonetheless, Lewis at the 2017 hearing and now on appeal continues to argue that "the Court is limited by the habitual petition filed in the case." (A-107).

Initially, the Superior Court at the 2017 hearing pointed out that the 2016 legislation is not ambiguous. (A-107). The trial court also noted that the State was not required to allege the 1979 burglary conviction in its 2004 habitual petition. (A-110). Specifically, the trial judge repeated that “The Court finds there is no ambiguity here.” (A-114). Both parties were permitted to use the entirety of Lewis’ criminal record to argue his eligibility to request a modification of his 2004 habitual criminal sentence. (A-117). The Superior Court Judge did not think the Legislature in 2016 would have placed the type of constraint upon the State that Lewis argues (a limitation only to convictions contained in the 2004 habitual petition). (A-117).

The Superior Court Judge at the 2017 hearing pointed out that an inmate gets his habitual sentence reviewed “only if that person was going to get a lesser sentence or had served a sentence that they could get under a new law.” (A-108). Lewis’ 2004 twenty year sentence cannot be modified because “a person doesn’t become eligible under this statute unless they had served whatever the mandatory time would be applicable to them now.” (A-109). The Superior Court Judge at the 2017 hearing did not think he was constrained by the original 2004 habitual petition. (A-118). Thus, for the trial court the only question was whether Lewis’ 1979 second degree burglary conviction could be established. (A-119).

In a subsequent written Order the Superior Court Judge denied Lewis' Request for a Certificate of Eligibility to file for a sentence modification under 11 Del. C. § 4214(f) and Del. Super. Ct. Spec. R. 2017-1(d). State v. Lewis, 2018 WL 4151282 (Del. Super. Aug. 28, 2018) (did not meet time-served requirement).

**I. THE INMATE IS NOT QUALIFIED TO
RECEIVE A CERTIFICATE OF ELIGIBILITY**

QUESTION PRESENTED

Has inmate Lewis met the time served requirement of 11 Del. C. § 4214(f)?

STANDARD AND SCOPE OF REVIEW

Questions of statutory interpretation are reviewed de novo. See Clark v. State, 2018 WL 1956298, at * 2 (Del. Apr. 24, 2018) (citing Smith v. Guest, 16 A.3d 920, 935 (Del. 2011)).

MERITS OF THE ARGUMENT

In this appeal from the Kent County Superior Court’s denial of a Certificate of Eligibility to file a sentence modification motion under 11 Del. C. § 4214(f) and Del. Super. Ct. Spec. R. 2017-1(d) [State v. Lewis, 2018 WL 4151282 (Del. Super. Aug. 28, 2018)], Appellant Edward M. Lewis argues; “The current version of 11 Del. C. § 4214(f) is ambiguous when applied in Mr. Lewis’ case.” (Opening Brief at 13). Lewis claims there is an ambiguity as to whether an inmate sentenced as a habitual criminal under 11 Del. C. § 4214(a or b) can meet the second requirement of 11 Del. C. § 4214(f), enacted in 2016, which requires an inmate petitioning for a sentence modification to have served the minimum amount of jail time required by other sections of 11 Del. C. § 4214. Specifically, Lewis claims there is a statutory ambiguity as to this second requirement “. . . 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 an habitual offender, or may use the defendant's entire criminal history, regardless of whether the State cited certain convictions at the time of sentencing." (Opening Brief at 13).

Lewis is incorrect. The Superior Court Judge in denying Lewis' petition for a Certificate of Eligibility ruled that 11 Del. C. § 4214(f) is not ambiguous as applied to Lewis' situation where a 1979 second degree burglary felony conviction was not included in a 2004 habitual criminal motion pursuant to 11 Del. C. § 4214(a) (A-107), and specifically noted, "The Court finds there is no ambiguity here." (A-114).

The Superior Court Judge properly observed that the State did not have to allege the 1979 second degree burglary conviction in its 2004 habitual criminal petition (A-11-13) because Lewis had other more recent prior felony convictions in 1994 (second degree conspiracy and PDWBPP) and 1996 (CCDW), that when combined with Lewis' 2004 PDWDCF conviction qualified the defendant for habitual criminal sentencing under 11 Del. C. § 4214(a). (A-110). The Superior Court Judge at the December 6, 2017 evidentiary hearing (A-93-159) correctly observed that either party can use the entirety of defendant Lewis' prior criminal record to argue whether or not Lewis is eligible to petition for a sentence

modification under 11 Del. C. § 4214(f). (A-117). Expressly rejecting Lewis' current appellate argument, the Superior Court Judge ruled: “. . . the Court cannot find that the General Assembly would have, given the overall structure, would have put that type of constraint on it.” (A-117).

Lewis is merely seeking a windfall because a 1979 prior second degree burglary conviction, which Lewis no longer denies, was not included in a 2004 habitual criminal motion even though inclusion of the 1979 felony conviction was unnecessary to find Lewis habitual eligible under 11 Del. C. § 4214(a). The requirement to have included the 1979 conviction in the State's 2004 motion does not exist in the 2016 legislative provision denominated 11 Del. C. § 2414(f). The Superior Court properly concluded that it was not limited to the criminal convictions listed in the State's 2004 motion. (A-118).

11 Del. C. § 4214(f) is not ambiguous as Lewis argues. When a statute is unambiguous, there is no need for judicial interpretation and the plain meaning rule applies. See Clark v. State, 2018 WL 1956298, at * 2 (Del. Apr. 24, 2018) (quoting Eliason v. Englehart, 733 A.2d 944, 946 (Del. 1999)). See also In re Adoption of Swanson, 623 A.2d 1095, 1096-97 (Del. 1993); Hudson Farms, Inc. v. McGrellis, 620 A.2d 215, 217 (Del. 1993); Spielberg v. State, 558 A.2d 291, 293 (Del. 1989). 11 Del. C. § 4214(f) is not ambiguous as applied to Lewis because the 2016 legislation does not address Lewis' peculiar circumstance. When no ambiguity

exists in a statute, further interpretation is unnecessary and the plain meaning of the enactment's language controls. See Ryan v. State, 791 A.2d 742, 743 (Del. 2002).

Applying 11 Del. C. § 4214(f) as written to the entirety of Lewis' prior criminal record, the Superior Court correctly concluded that because Lewis has not yet served the 20 year statutory maximum sentence for his 2004 PDWDCF conviction, he has not met the time-served requirement to petition for a sentence modification under 11 Del. C. § 4214(f). State v. Lewis, 2018 WL 4151282, at * 2 (Del. Super. Aug. 28, 2018). While Lewis argues that "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." (Opening Brief at 15), there is nothing unfair about considering the entirety of an inmate's prior criminal conviction record in deciding whether the defendant should be permitted to seek a sentence modification for a mandatory sentence imposed in 2004. (A-25-41).

CONCLUSION

The judgment of the Superior Court should be affirmed.



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AFFIDAVIT OF SERVICE

BE IT REMEMBERED that on this 5th day of February 2019, personally appeared before me, a Notary Public, in and for the County and State aforesaid, Mary T. Corkell, known to me personally to be such, who after being duly sworn did depose and state:

(1) That she is employed as a legal secretary in the Department of Justice, 102 West Water Street, Dover, Delaware.

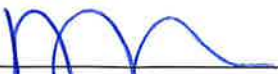
(2) That on February 5, 2019, she did serve electronically the attached State's Answering Brief properly addressed to:

Brett A. Hession, Esquire
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Wilmington, DE 19801



Mary T. Corkell

SWORN TO and subscribed
Before me the day aforesaid.



Notary Public

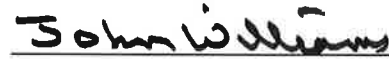
DIANE L. WEEKS-TAPPAN
Attorney At Law With
Power To Act As Notary Public
Per 29 Del. C. § 323(a)(3)

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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT
AND TYPE-VOLUME LIMITATION**

1. This Brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times Roman 14-point typeface using Microsoft Word 2016.
2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 2170 words, which were counted by Microsoft Word 2016.



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