



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 REPLY BRIEF

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DATE: February 12, 2019

TABLE OF CONTENTS

TABLE OF CITATIONS ..... ii

STATEMENT OF FACTS ..... 1

ARGUMENT

I. **THE UPDATED HABITUAL OFFENDER STATUTE IS  
AMBIGUOUS AND PRINCIPLES OF STATUTORY  
INTERPRETATION OF FAIRNESS REQUIRE REVERSAL OF  
THE SUPERIOR COURT’S DECISION** ..... 2

CONCLUSION..... 5

TABLE OF CITATIONS

**Cases**

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

*Dambro v. Meyer*, 974 A.2d 121 (Del. 2009).....4

*Emerald Partners v. Berlin*, 726 A.2d 1215 (Del. 1999) .....3

*King v. VeriFone Holdings, Inc.*, 994 A.2d 354 (Del. Ch. 2010).....3

*King v. VeriFone Holdings, Inc.*, 12 A.3d 1140 (Del. 2011).....3

*LeVan v. Independence Mall, Inc.*, 940 A.2d 929 (Del. 2007).....4

*One-Pie Investments, LLC v. Jackson*, 43 A.3d 911 (Del. 2012).....4

**Statutes**

11 *Del. C.* § 4214(f) .....*passim*

## STATEMENT OF FACTS

The Appellant, Edward Lewis, adopts by reference the statement of facts section contained in his opening brief.<sup>1</sup> In its Answering Brief, the State notes that “[d]uring a subsequent April 24, 2018 Superior Court hearing, 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.”<sup>2</sup>

In the Superior Court, Mr. Lewis conceded that the State had proved the existence of the 1979 conviction for Burglary in the Second Degree beyond a reasonable doubt. Mr. Lewis took this position after the State provided additional documents to defense counsel following the December 6, 2017 evidentiary hearing in this matter.

Mr. Lewis did not and does not concede that the existence of the 1979 conviction for Burglary in the Second Degree renders him ineligible for sentence review under 11 *Del. C.* § 4214(f). On January 22, 2018, counsel for Mr. Lewis sent a letter to the Superior Court explaining Mr. Lewis’s position.<sup>3</sup>

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<sup>1</sup> App. Op. Br. at 4-6.

<sup>2</sup> State’s Ans. Br. at 5 (internal citations omitted).

<sup>3</sup> AR-001.

**I. THE UPDATED HABITUAL OFFENDER STATUTE IS AMBIGUOUS AND PRINCIPLES OF STATUTORY INTERPRETATION OF FAIRNESS REQUIRE REVERSAL OF THE SUPERIOR COURT’S DECISION.**

In an apparent juxtaposition with its stated position that 11 *Del. C.* § 4214(f) is unambiguous, the State concedes “the 2016 legislation does not address Lewis’ peculiar circumstance.”<sup>4</sup> Therefore, the parties agree that no language in § 4214(f) squarely addresses Mr. Lewis’s case. The only disagreement is whether this lack of clarity renders the statute ambiguous or unambiguous.

The portion of the record the State relies upon to support its argument that 11 *Del. C.* § 4214(f) is unambiguous is at odds with the standard this Court has set forth to determine whether a statute is ambiguous. This Court has held “[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.”<sup>5</sup> In arguing that § 4214(f) is ambiguous, the State cites the comments of the Superior Court in this case that “the Court cannot find that the General Assembly would have, given the overall structure, would have put that type of constraint [in the statute].”<sup>6</sup>

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<sup>4</sup> State’s Ans. Br. at 10.

<sup>5</sup> *Clark v. State*, 184 A.3d 1292, 2018 WL 1956298, at \*2 (Del. Apr. 24, 2018) (ORDER) (internal quotation marks omitted).

<sup>6</sup> State’s Ans. Br. at 10.

The fact that the Superior Court felt compelled to express its belief in what the General Assembly intended is proof that the statute itself is ambiguous. If the statute truly is unambiguous, there would be no need for the Superior Court to hypothesize as to the unstated intentions of the General Assembly; the plain language of the statute would control. But as the State concedes, “the 2016 legislation does not address Lewis’ peculiar circumstance.”<sup>7</sup> As the language of § 4214(f) does not address the situation posed by Mr. Lewis’s case, the statute is ambiguous when applied to Mr. Lewis. In effect, the portion of the record that the State relies upon to support its position that § 4214(f) is unambiguous actually supports the proposition that the statute is ambiguous.

In its Answering Brief, the State rests on the argument that 11 *Del. C.* § 4214(f) is unambiguous. The State does not analyze what the result should be if this Court holds that the statute is ambiguous. Citing this Court, the Delaware Court of Chancery has stated “[a] party’s failure to raise an argument in its answering brief constitutes a waiver of that argument.”<sup>8</sup>

The analysis of what the result should be if this Court holds that § 4214(f) is ambiguous when applied in Mr. Lewis’s case would be governed by the standards

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<sup>7</sup> *Id.*

<sup>8</sup> *King v. VeriFone Holdings, Inc.*, 994 A.2d 354, 360 n.21 (Del. Ch. 2010) (citing *Emerald Partners v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999)), *rev’d on other grounds*, 12 A.3d 1140 (Del. 2011).

stated in this Court's prior cases.<sup>9</sup> In his Opening Brief, Mr. Lewis performed this analysis<sup>10</sup> and adopts by reference that section of the brief into this Reply Brief. In short, both principles of statutory interpretation and fundamental fairness require that the Superior Court's denial of Mr. Lewis's Motion for a Certificate of Eligibility to File a Petition to Modify Sentence be reversed.

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<sup>9</sup> See, e.g., *One-Pie Investments, LLC v. Jackson*, 43 A.3d 911, 914 (Del. 2012); *Dambro v. Meyer*, 974 A.2d 121, 130 (Del. 2009); *LeVan v. Independence Mall, Inc.*, 940 A.2d 929, 932 (Del. 2007).

<sup>10</sup> Def. Op. Br. at 14-15.

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,

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