

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	ID No. 9607013218 WCC
)	
KEVIN HILL,)	
)	
Defendant.)	

Submitted: October 4, 2010
Decided: January 19, 2011

On Defendant's Motion for Correction of Illegal Sentence - DENIED

ORDER

Paul Wallace, Esquire; Department of Justice, 820 North French Street,
Wilmington, Delaware 19801.

Kevin Hill, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna,
Delaware, 19977. *Pro se.*

CARPENTER, J.

Before this Court is Defendant Kevin Hill's ("Defendant") Pro Se Motion for Correction of an Illegal Sentence pursuant to Superior Court Criminal Rule 35(a). Defendant argues that his conviction for six counts of Possession of a Firearm During the Commission of a Felony violates his double jeopardy constitutional rights. For the reasons set forth below, Defendant's Motion for Correction of an Illegal Sentence is denied.

FACTUAL AND PROCEDURAL BACKGROUND

In 1997, Hill was found guilty by a Superior Court jury of Robbery in the First Degree, Conspiracy in the Second Degree, two counts of Murder in the First Degree, and six counts of Possession of a Firearm during the Commission of a Felony.¹ He was sentenced to two life terms, plus thirty years, and an additional two years of probation.² The Delaware Supreme Court affirmed both the convictions and the sentences on direct appeal.³ In October 2007, Hill filed an unsuccessful Motion for Postconviction Relief with this Court. He filed this Motion for Correction of an Illegal Sentence on July 7, 2010.

Mr. Hill was arrested and convicted in connection with a robbery and shooting on July 13, 1996, at the Great Wall Chinese Restaurant in Wilmington, which resulted

¹ *Hill v. State*, No. 101,2008, *1 (Del. Sept. 10, 2008)

² *Id.*

³ *Id.* (citing *Hill v. State*, Del. Supr., No. 226, 1998, Holland, J. (June 14, 1999)).

in the death of a restaurant employee.⁴ Two firearms were used in the robbery: a .45 caliber handgun and a .38 caliber handgun. Testimony during the trial established that Hill had been carrying the .45 caliber handgun on the night of the incident⁵ and one of his co-defendants, Aldrich Hackett, was carrying another gun during the robbery.⁶ As a result of the involvement of the two weapons during the robbery and murder offenses, the Defendant was charged with six counts of Possession of a Firearm During the Commission of a felony, one count for each offense and each gun.

DISCUSSION

Defendant requests a correction of his sentence under Superior Court Criminal Rule 35(a), arguing that the Court illegally imposed multiple sentences for Possession of a Firearm During Commission of a Felony. Under Superior Court Rule 35(a), the “court may correct an illegal sentence at any time.”⁷ The Delaware Supreme Court has held that a sentence is “illegal” for purposes of Rule 35 where the sentence imposed exceeds the statutorily authorized limits, violates double jeopardy, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.⁸

⁴ *State v. Hill*, 2008 WL 361227, *1-2 (Del. Super. Jan. 31, 2008) (“*Hill II*”).

⁵ *Hackett v. State*, 1999 WL 624108, *1 (Del. July 16, 1999).

⁶ *Hackett v. State*, 1999 WL 624108, *1 (Del. July 16, 1999).

⁷ Super.Ct.Crim.R. 35(a).

⁸ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

Mr. Hill contends that sentencing him for multiple counts of Possession of a Firearm During Commission of a Felony violates his right not to be charged multiple times for the same offense. He argues that the possession of a firearm during the commission of multiple felonies constitutes a single offense and that his multiple sentences for weapons possession are unconstitutional. However, Mr. Hill's position is not the law in Delaware. Where a defendant has alleged a violation of the Double Jeopardy Clause, "the primary inquiry [for the court] must be one of statutory construction and whether there exists clearly expressed legislative intent to impose multiple punishments."⁹ It is well settled that "it is not a violation of double jeopardy [under Delaware law] for the State to charge Possession of a Firearm During the Commission of a Felony for each firearm possessed and for each felony committed."¹⁰ The Delaware Supreme Court has repeatedly and consistently held that "the multiplication of counts of Possession of a Deadly Weapon During the Commission of a Felony by both the number of weapons [and] the number of separate underlying felonies" is supported by the "unambiguous language" of 11 *Del. C.* §1447.¹¹ Furthermore, the Delaware Supreme Court has held that imposing separate punishment for each weapon possessed during the commission of a criminal offense is "consistent with the deterrence goal of the statute" because the statute rests on the

⁹ *Nance v. State*, 903 A.2d 283, (Del. 2006), citing *Robertson v. State*, 630 A.2d 1084, 1092-93 (Del. 1993).

¹⁰ *Carter v. State*, 911 A.2d 802 (Del. Oct. 27, 2006) (TABLE).

¹¹ *Id.* at 289.

assumption that “the more weapons a criminal has at his disposal during the commission of a felony the greater the likelihood that the felony will result in violence against a victim.”¹² The Delaware Supreme Court has thus consistently held 11 *Del. C.* §1447 reflects the legislature’s intent to impose multiple punishments for multiple violations of the crime of possessing firearms during the commission of a felony.¹³

As such, the Defendant’s convictions for the possession of a firearm by him and his co-defendant during the commission of the three criminal offenses did not violate his constitutional rights nor make his sentence illegal. Accordingly, Defendant’s request for a modification of his sentence has no basis in law and is hereby DENIED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

¹² *Pauls v. State*, 554 A.2d 1125, *3 (Del. Jan. 12, 1989) (TABLE). *See also Robertson v. State*, 630 A.2d 1084, 1093 (holding that defendants could properly be convicted of more than two counts of Possession of a Deadly Weapon During Commission of a Felony, even though only two weapons were used, when multiple felonies were committed with those two weapons).

¹³ *Id.*