

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

STATE OF DELAWARE ,)	
)	
v.)	
)	
LUCIOUS FRENCH,)	I.D. # 1005012828
)	
Defendant.)	

ORDER

On this 10th day of March, 2011, upon consideration of Defendant’s Motion to Reconsider Sentencing it appears that:

1. On January 27, 1999, Defendant was convicted of Escape After Conviction, a violent felony pursuant to 11 *Del. C.* § 1253.¹
2. On April 6, 2000, Defendant was convicted of Maintaining a Vehicle and Tampering with Physical Evidence, both of which are felonies.²
3. On December 8, 2010, Defendant was convicted after trial of Possession of a Firearm by a Person Prohibited (“PFBPP”), a felony pursuant to 11 *Del. C.* § 1448(e). Prior to the conviction being entered on the docket, the State indicated its

¹State’s Letter Mem. in Opp’n to Def.’s Mot. to Reconsider Sentencing (“Pl.’s Resp.”).

²11 *Del. C.* § 4755; 11 *Del. C.* § 1269. See Def.’s Mot. to Reconsider Sentencing (“Def.’s Mot.”) at ¶ 1.

intent to seek to have Defendant sentenced as a habitual offender under Delaware law.

4. On January 28, 2011, at Defendant’s sentencing hearing on the PFBPP conviction, the State formally moved to have the Defendant declared a habitual offender pursuant to 11 *Del. C.* § 4214(a).³ Defendant did not contest the factual bases of the State’s Motion, but did raise for the first time a question regarding whether he could be sentenced pursuant to the minimum mandatory provision of the habitual offender statute given his criminal history and the nature of his PFBPP conviction.⁴ Because the argument came late and was not fully developed, the Court went forward with the sentencing but granted leave to Defendant to file a motion to reconsider sentencing with appropriate authority if he found a legal basis to do so. Defendant has now filed that motion.

5. Relying upon *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Defendant argues that, by characterizing Defendant’s conviction for PFBPP as a violent felony, the State “has tied the hands of the Court compelling it to impose the enhanced

³11 *Del. C.* § 4214 (a) (“Any person who has been 3 times convicted of a felony. . . and who shall thereafter be convicted of a subsequent [4th] felony of this State is declared to be an habitual criminal. . . .”).

⁴Def.’s Mot. at ¶ 4.

[mandatory] penalty.”⁵ According to Defendant, because the indictment charging him with PFBPP references a non-violent felony (maintaining a dwelling) as the basis for his alleged “person prohibited” status, the State’s characterization of his conviction for PFBPP as a violent felony at sentencing was improper and prejudicial.

6. The habitual offender statute plainly states that the minimum mandatory sentence imposed by the statute “shall apply only when the 4th or subsequent felony is a Title 11 violent felony, as defined in § 4201(c) of this title.”⁶ Section 4201(c) defines PFBPP as a “violent felony” when a “firearm [is] . . . owned, possessed or controlled *by a violent felon.*”⁷ According to Defendant, he is not a violent felon for purposes of his PFBPP conviction because the indictment charging PFBPP references a non-violent felony conviction and the State failed to present evidence of his “violent felon” status at trial.

7. Defendant provides no support for the argument that the Court may ignore his conviction for a violent felony (escape after conviction) when determining his status as a “violent” or “non-violent” felon under the habitual offender and PFBPP statutes, and the Court has found no such authority in its own search. Our Supreme

⁵*Id.* at 8.

⁶11 *Del. C.* § 4214 (a) (emphasis supplied).

⁷11 *Del. C.* § 4201(c) (referring to 11 *Del. C.* § 1448(e)) (emphasis supplied).

Court has held that “the legislative intent [of the PFBPP statute] is clear. The General Assembly has stated that the *prior* commission of any felony is sufficient to make illegal the possession of a firearm”⁸ The PFBPP statute goes on to define a “violent felony” as “*any* felony so designated by § 4201(c) of this title. . . .”⁹ In the absence of authority to the contrary, the Court is satisfied that a consistent reading of the statutes at issue here requires that the Court classify a defendant who has been convicted of a *prior* violent felony as a “violent felon” for purposes of the PFBPP statute. Defendant’s conviction of the violent felony of escape after conviction in 1999 made him a “violent felon” from that moment forward pursuant to 11 *Del. C.* § 4201(c).¹⁰ Thus, Defendant’s 2010 conviction of PFBPP constitutes a violent felony under 11 *Del. C.* § 4214(a) because Defendant, at the time he possessed the firearm, was a convicted violent felon.¹¹

8. Defendant further argues that any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the jury and proved beyond a reasonable doubt.¹² Because Defendant stipulated to his status as a

⁸*State v. Robinson*, 251 A.2d 552, 555 (Del. 1969).

⁹11 *Del. C.* § 1148(e)(3) (emphasis supplied).

¹⁰*See supra* ¶1.

¹¹*See supra* ¶¶ 1-3.

¹²Def.’s Mot. at ¶ 9.

person prohibited at his trial for PFBPP, Defendant argues that his due process rights have been violated since the question of his status as a “violent felon” was not submitted to and decided by the jury.¹³

9. This argument is also rejected. It is well-settled that when parties agree to a stipulation, they are agreeing that the facts giving rise to the stipulation require no further proof.¹⁴ Defendant’s stipulation of his status as a person prohibited conferred a significant benefit to him, which is precisely why he agreed to the stipulation. With the stipulation entered as evidence, the Court precluded the State from presenting prejudicial evidence regarding the details of Defendant’s prior felony convictions.¹⁵ For Defendant now to argue that he was somehow prejudiced because such evidence was not presented to the jury is disingenuous and wholly without merit.

10. Moreover, Defendant’s argument appears to confuse what are purely sentencing issues (his criminal history and eligibility for habitual offender status) with a substantive offense-related issue (whether an element of the charged offense, if proven, will justify an enhancement of the penalty for that offense). In this regard,

¹³*Id.*

¹⁴*Smith v. State*, 913 A.2d 1197, 1224 (Del. 2006).

¹⁵*See supra* ¶¶ 1-2.

his reliance upon *Apprendi* is again misguided.¹⁶ What is required for purposes of habitual offender status is that the State present evidence of a defendant's criminal conviction history to satisfy the Court beyond a reasonable doubt that the defendant has the requisite felony convictions.¹⁷ This determination is made after the State secures a conviction and is separate and apart from the jury's consideration of evidence giving rise to that conviction. In this case, the factual predicate of the State's motion to declare Defendant a habitual offender was uncontested.¹⁸ Moreover, the predicate facts leading to the enhanced mandatory penalty imposed upon Defendant - - including his status as a violent felon - - were established beyond a reasonable doubt by virtue of the certified copy of his criminal history. There was no need for the State to prove at trial, or for the jury to find at trial, a fact that was conceded by the Defendant at sentencing and was, in any event, already established conclusively in Defendant's criminal history.

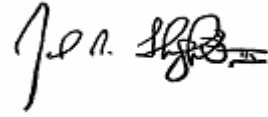
11. Based on the foregoing, Defendant's Motion to Reconsider Sentencing is **DENIED**.

¹⁶*Apprendi*, 530 U.S. at 477 (Holding that a "criminal defendant is entitled to jury determination that he is guilty of every element of crime with which he is charged, beyond reasonable doubt.").

¹⁷11 *Del. C.* § 4214 (a).

¹⁸Def.'s Mot. at ¶ 4.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "J.R. Slights, III". The signature is written in a cursive style with a horizontal line underneath the name.

The Honorable Joseph R. Slights, III