

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SCOTT O. JOHNSON,	§	
	§	Nos. 109, 110 and 208, 2007
Defendant Below,	§	
Appellant,	§	CONSOLIDATED
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware in and
STATE OF DELAWARE,	§	for New Castle County
	§	
Plaintiff Below,	§	Cr. ID No. 0606001895
Appellee.	§	C.A. No. 07M-01-102
	§	

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

Submitted: July 25, 2008
Decided: October 28, 2008

ORDER

This 28th day of October 2008, upon consideration of the briefs of the parties and the Superior Court record, it appears to the Court that:

(1) On December 20, 2006, the appellant, Scott O. Johnson pled guilty to Trafficking in Cocaine and Maintaining a Vehicle. On February 21, 2007, Johnson was declared a habitual offender and was sentenced, pursuant to title 11, section 4214(a) of the Delaware Code, to six years of incarceration followed by residential drug treatment and probation.

(2) On March 1, 2007, Johnson filed an appeal from his guilty plea and sentencing. In a separate notice of appeal filed on the same day,

Johnson jointly appealed the Superior Court's denials of his motion to withdraw guilty plea and *pro se* petition for a writ of habeas corpus.¹ Thereafter, on April 25, 2007, Johnson filed an appeal from the Superior Court's April 16, 2007 denial of his *pro se* motion for modification of sentence.²

(3) By Order dated July 3, 2007, Johnson's appeals were consolidated. By Order dated December 4, 2007, Johnson was granted leave to proceed *pro se* on appeal.³

(4) In his opening brief on appeal, Johnson claims that the Superior Court erred in denying his motion to withdraw the guilty plea. Second, Johnson contends that one of the prior convictions underlying his sentencing as a habitual offender did not meet the requirements of section 4214(a). We conclude that there is no merit to Johnson's appeal. Accordingly, we affirm.

(5) A motion to withdraw a guilty plea is addressed to the sound discretion of the trial court.⁴ A judge should permit withdrawal of a guilty plea only if the judge determines that "the plea was not voluntarily entered or was entered because of misapprehension or mistake of defendant as to his

¹ *Johnson v. Williams*, Del. Super., C.A. No. 07M-01-102, Toliver, J. (Jan. 29, 2007 order docketed Feb. 5, 2007).

² *State v. Johnson*, Del. Super., Cr. ID No. 0606001895, Toliver, J. (Mar. 29, 2007 order docketed on April 16, 2007).

³ Johnson had a right to counsel in his appeal from the guilty plea and sentence.

⁴ *Brown v. State*, 250 A.2d 503, 504 (Del. 1969).

legal rights.’’⁵ A denial of a motion to withdraw a guilty plea is reviewable on appeal for an abuse of discretion.⁶

(6) In this case, Johnson, through counsel, moved to withdraw the guilty plea on the basis of “irreparable differences” with his counsel, his counsel’s alleged “misrepresentation concerning the plea,” and Johnson’s 2003 disciplinary complaint against counsel. It appears that the Superior Court considered the motion and denied it before sentencing Johnson on February 21, 2007.⁷

(7) Having reviewed the transcript of the December 20, 2006 guilty plea colloquy, the truth-in-sentencing guilty plea form, and the transcript of Johnson’s February 21, 2007 sentencing, the Court is satisfied that the Superior Court did not abuse its discretion when denying Johnson’s motion to withdraw his guilty plea. It is clear that Johnson’s plea was entered knowingly and voluntarily and was not entered as a result of misapprehension or mistake as to his legal rights.

(8) Johnson challenges the factual predicate for his sentencing as a habitual offender under section 4214(a) by challenging the sentencing for

⁵ *Scarborough v. State*, 938 A.2d 644, 650 (Del. 2007) (quoting *State v. Insley*, 141 A.2d 619, 622 (Del. 1958)).

⁶ *Blackwell v. State*, 736 A.2d 971, 972 (Del. 1999).

⁷ The Superior Court docket reflects that the motion to withdraw was denied on January 29, 2007; however, a corresponding order does not appear in the Superior Court record.

one of the underlying felony convictions relied upon by the State.⁸ Johnson's claim is without merit. The record reflects that Johnson was convicted of three qualifying predicate felonies and thus was eligible for sentencing as a habitual offender under section 4214(a).

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁸ See Del. Code Ann. tit. 11, § 4214(a) (2007) (providing that any person three times convicted of specified felonies is, upon a fourth conviction or subsequent conviction, subject to a sentence of up to life imprisonment).