

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL LINDSEY,	§
	§ No. 122, 2023
Defendant Below,	§
Appellant,	§ Court Below–Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID Nos. 1708006225 (N)
STATE OF DELAWARE,	§ 1708003578 (N)
	§
Appellee.	§
	§

Submitted: September 15, 2023
Decided: November 27, 2023

Before **SEITZ**, Chief Justice; **VALIHURA** and **GRIFFITHS**, Justices.

ORDER

After consideration of the parties’ briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Michael Lindsey, appeals the Superior Court’s denial of his motion for postconviction relief under Superior Court Criminal Rule 61. Having considered the parties’ respective arguments, we affirm the Superior Court’s judgment.

(2) In September 2017, a Superior Court grand jury indicted Lindsey for multiple crimes arising out of two incidents—one that occurred on August 5, 2017, and one that occurred on August 9, 2017. For the August 5 incident, Lindsey was charged with aggravated menacing, unlawful imprisonment, attempted unlawful

imprisonment, three counts of possession of a firearm during the commission of a felony (“PFDCF”), possession of a firearm by a person prohibited (“PFBPP”), and possession of ammunition by a person prohibited (“PABPP”) (together, the “August 5 Charges”). For the August 9 incident, Lindsey was charged with resisting arrest with force or violence, carrying a concealed deadly weapon (“CCDW”), PFBPP, and PABPP (together, the “August 9 Charges”). The parties stipulated to the severance of the August 5 Charges from the August 9 Charges and agreed to proceed to trial on the August 9 Charges first.

(3) Following a two-day trial on the August 9 Charges, a Superior Court jury found Lindsey guilty of resisting arrest (as a lesser-included offense of resisting arrest with force or violence), CCDW, PFBPP, and PABPP. The Superior Court deferred sentencing and ordered a presentence investigation. In April 2018, the State filed a motion to have Lindsey declared and sentenced as a habitual offender under 11 *Del. C.* § 4214(d) for his CCDW and PFBPP convictions, citing Lindsey’s three prior felony convictions: a 1991 conviction for second-degree robbery, a 1996 conviction for possession of a deadly weapon by a person prohibited (“PDWBPP”), and a 2009 conviction for PFBPP.

(4) On July 16, 2018, the parties reached an agreement to resolve the August 5 Charges. Under the terms of the plea agreement, Lindsey would plead guilty to aggravated menacing and agree that he was subject to habitual-offender

sentencing under 11 *Del. C.* § 4214(a), (c), and (d). In exchange for his guilty plea, the State agreed to (i) withdraw its prior habitual-offender motion and file a revised motion, seeking to have Lindsey sentenced as a habitual offender for his PFBPP conviction (but not his CCDW conviction) arising out of the August 9 Charges; (ii) dismiss the remaining August 5 Charges; (iii) not seek habitual-offender sentencing for Lindsey's aggravated-menacing conviction; and (iv) cap its sentencing recommendation for both sets of charges to 15 years of unsuspended incarceration. The parties also agreed to immediate sentencing following the Superior Court's acceptance of Lindsey's guilty plea to aggravated menacing. After conducting a colloquy with Lindsey, the Superior Court accepted Lindsey's guilty plea, granted the State's habitual-offender motion, and sentenced Lindsey in accordance with the plea agreement to an aggregate of 37 years of incarceration, suspended after 15 years for two years of Level III probation. We affirmed Lindsey's convictions and sentence on direct appeal.¹

(5) In March 2020, Lindsey filed a motion for correction of an illegal sentence under Superior Court Criminal Rule 35(a) or, in the alternative, a motion for postconviction relief under Superior Court Criminal Rule 61. In support of his motion, Lindsey argued that his sentence was illegally enhanced under Section 4214(d) because he had only one prior violent felony conviction—second-degree

¹ *Lindsey v. State*, 2019 WL 1556684 (Del. Apr. 9, 2019).

robbery—and PDWBPP was a non-violent felony. Shortly thereafter, Lindsey filed a motion for postconviction relief under Rule 61, arguing, among other things, ineffective assistance of counsel based on trial counsel’s failure to object to the State’s use of his non-violent conviction for PDWBPP in support of its habitual-offender motion. The Superior Court noted that Lindsey’s argument that his habitual-offender sentence was imposed on the basis of disputed facts or was the result of the Superior Court’s erroneous finding that Lindsey qualified for habitual-offender status was time-barred because a motion for correction of a sentence imposed in an illegal manner must be filed within 90 days of sentencing.² The Superior Court therefore concluded that Lindsey’s argument that he is serving an illegal sentence was essentially a postconviction claim that counsel was ineffective for failing to object to Lindsey’s habitual-offender status. At Lindsey’s request, the Superior Court appointed counsel to assist Lindsey with the postconviction proceedings.

(6) In February 2021, postconviction counsel moved to withdraw, explaining that, after a careful review of the record, she had not identified any potential grounds for postconviction relief. In response, Lindsey filed several amended motions for correction of an illegal sentence and/or postconviction relief, arguing that *all* his prior convictions were for non-violent felonies and, accordingly,

² See Del. Super. Ct. Crim. R. 35(a), (b).

did not support the State’s habitual-offender motion. After expanding the record with an affidavit from trial counsel, briefing, oral argument, and supplemental briefing, the Superior Court granted postconviction counsel’s motion to withdraw and denied Lindsey’s motion for postconviction relief.³ This appeal followed.

(7) We review the Superior Court’s denial of postconviction relief for abuse of discretion.⁴ We review *de novo* claims of constitutional violations, including claims of ineffective assistance of counsel.⁵ In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that (i) trial counsel’s representation fell below an objective standard of reasonableness,⁶ and (ii) there is a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different.⁷ We likewise review the denial of a motion for correction of illegal sentence for abuse of discretion.⁸ A sentence is illegal if it exceeds statutory limits, violates the Double Jeopardy Clause, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.⁹

³ *State v. Lindsey*, 2023 WL 2535895 (Del. Super. Ct. Mar. 16, 2023).

⁴ *Baynum v. State*, 211 A.3d 1075, 1082 (Del. 2019).

⁵ *Id.*

⁶ *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

⁷ *Id.* at 694.

⁸ *Fountain v. State*, 2014 WL 4102069, at *1 (Del. Aug. 19, 2014).

⁹ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

(8) On appeal, Lindsey argues as he did below that his sentence was illegally enhanced because his 1991 second-degree robbery conviction is not a violent felony.¹⁰ After careful consideration, we conclude that the Superior Court judgment should be affirmed on the basis of and for the reasons cited in its March 16, 2023 order rejecting this argument.¹¹ Contrary to Lindsey’s argument on appeal, the 1997 amendment to the second-degree robbery statute¹² did not affect the fact that Lindsey’s 1991 second-degree robbery conviction is a violent felony for purposes of habitual-offender sentencing for criminal conduct committed in 2017.¹³ Trial counsel was therefore not ineffective for failing to object to Lindsey’s habitual-offender status.¹⁴

(9) Lindsey also argues for the first time on appeal that his sentence violates the multiplicity doctrine because his convictions for PFBPP and PABPP are based on Lindsey’s possession of a single, loaded handgun. Because Lindsey did

¹⁰ Because Lindsey failed to brief the other claims that he raised below, he has waived any right to further review of those claims. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

¹¹ *Lindsey*, 2023 WL 2535895, at *9-12.

¹² Lindsey seems to argue that the 1997 addition of language to 11 *Del. C.* § 831 (“Section 831”) expanding the definition of second-degree robbery converted what was previously a non-violent felony into a violent felony by adding the element of force. It did not. The version of Section 831 under which Lindsey was convicted also included the element of force, and second-degree robbery has *always* been categorized a violent felony under 11 *Del. C.* § 4201(c) since its adoption in 1996—notably, before the 1997 amendment to Section 831.

¹³ *See, e.g., Spencer v. State*, 2022 WL 19837899, at *2 (Del. May 16, 2022).

¹⁴ Lindsey claims that trial counsel admitted during the sentencing colloquy that Lindsey did *not* have the requisite convictions to qualify for habitual-offender status. However, it is clear from the plea agreement, the entirety of the plea and sentencing colloquy, and trial counsel’s affidavit that the trial counsel agreed that Lindsey had two prior violent felony convictions and was subject to habitual-offender sentencing.

not raise this argument below, we review it for plain error.¹⁵ There is no plain error here.¹⁶

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice

¹⁵ Del. Supr. Ct. R. 8.

¹⁶ See *Brown v. State*, 2021 WL 2588923, at *1 (Del. June 24, 2021) (“Neither the multiplicity doctrine nor the Double Jeopardy Clauses in the United States and Delaware Constitutions barred the Superior Court’s consideration of [the appellant’s] convictions of [PFBPP] and [PABPP], which were based on [the appellant’s] simultaneous possession of a firearm and ammunition, as separate offenses for sentencing purposes.”).