

offender to life in prison.¹ This Court affirmed Hudson's conviction and sentence on direct appeal.²

(3) In this appeal, Hudson claims that: a) he was denied his constitutional right to a fair trial because the judge permitted a biased juror to remain on the jury; and b) the State did not present the requisite proof that he should be sentenced as an habitual offender. To the extent Hudson has not argued other grounds to support his appeal that were previously raised, those grounds are deemed waived and will not be addressed by this Court.³

(4) The record reflects that, during the first day of Hudson's trial, one of the jurors informed the Superior Court judge that she recognized Hudson from proceedings in the Family Court. The judge questioned the juror outside the presence of the other jurors. The juror stated that, while serving as a domestic violence intern, she had observed a hearing attended by Hudson. She told the judge that she did not recall what Hudson's role in the hearing was and that she had not formed any conclusions, either positive or negative, about Hudson as a result of observing the hearing. After the judge finished questioning the juror, both

¹ Del. Code Ann. tit. 11, § 4214(b) (2001).

² *Hudson v. State*, 783 A.2d 124 (Table) (Del. 2001).

³ *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his motion for postconviction relief filed in the Superior Court, Hudson also argued that testimony from an eyewitness should have been suppressed, his attorney did not properly cross examine the investigating officer, his photograph should not have been admitted into evidence, the judge's instructions were deficient, and the prosecutor engaged in misconduct by eliciting perjured testimony.

the prosecutor and defense counsel stated they were satisfied with the judge's decision to allow her to remain on the jury panel.

(5) A trial judge has discretion to determine the impartiality of a juror by questioning the juror, observing the juror's demeanor, and evaluating the juror's ability to render a fair verdict.⁴ In this case, the trial transcript reflects that the judge questioned the juror at length concerning her previous experience with Hudson and asked her if, in light of that, she could render a fair verdict. She replied that she could. We find the actions taken by the judge with respect to the juror to be appropriate and find no error or abuse of discretion in the judge's decision to allow her to remain on the jury panel.⁵

(6) While Hudson contends that the judge did not apply the same standard to this juror as was applied to several other potential jurors who were dismissed before the trial, the record does not support that assertion. Unlike the juror in question, the other potential jurors told the judge that, for various reasons, they could not be impartial or render a fair verdict. Under these circumstances, it was appropriate for the judge to dismiss those jurors.

⁴ *Morrisey v. State*, 620 A.2d 207, 214 (Del. 1993).

⁵ To the extent Hudson claims that his counsel was ineffective for failing to move to have the juror stricken from the jury panel, that claim is likewise without merit. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

(7) Hudson's second claim is that there was an insufficient predicate for the judge to declare him an habitual offender. Specifically, he contends that his Maryland conviction of distribution of illegal drugs, which was one of the convictions listed by the State in support of its petition, was not a permissible conviction under the habitual offender statute.⁶ Because this claim was not presented to the Superior Court in the first instance, we decline to address it in this appeal.⁷

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

BY THE COURT:

/s/ Randy J. Holland
Justice

⁶ The conviction was a Maryland conviction of cocaine distribution.

⁷ Supr. Ct. R. 8. We note that even if the Maryland conviction was erroneously relied upon by the sentencing judge in declaring Hudson an habitual offender, any such error was harmless since there were two other convictions—a Delaware conviction of Unlawful Sexual Intercourse in the Third Degree and a second Delaware conviction of Delivery of a Narcotic Schedule II Controlled Substance—that supported Hudson's habitual offender status. Del. Code Ann. tit. 11, § 4214(b).